

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN J. MCGLEW

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1965 and 1966;

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon

John J. McGlew (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John J. McGlew
432 Terrace Avenue
Hasbrouck Heights, New Jersey 07604

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

29th day of March, 1972.

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN J. MCGLEW

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s)) 1965 and 1966:

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Edmund L. Pender, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edmund L. Pender, C.P.A.
25 West 43rd Street
New York, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

29th day of March, 1972

Lynn Wilson

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 29, 1972

John J. McGlew
432 Terrace Avenue
Hasbrouck Heights, New Jersey 07604

Dear Mr. McGlew:

Please take notice of the **Decision** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **four months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Paul B. Coburn

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN J. McGLEW : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1965 and 1966. :

Petitioner, John J. McGlew, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1965 and 1966. (File No. 68550356). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 13, 1971, at 1:30 P.M. Petitioner appeared by Edmund L. Pender, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel).

ISSUE

Was all of the income received by petitioner, John J. McGlew, from his activities as a partner in the law firm of McGlew & Toren, Esqs., during the years 1965 and 1966 allocable to New York State?

FINDINGS OF FACT

1. Petitioner, John J. McGlew, and his wife filed New York State combined nonresident income tax returns for the years 1965 and 1966. He allocated the partnership income received by him during said years from the partnership of McGlew & Toren, Esqs. based upon the number of days he allegedly worked inside and outside of New York State during said years for said partnership.
2. On April 11, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, John J. McGlew, disallowing the aforesaid allocation of his net income from his law practice

upon the ground that it constituted partnership income from a partnership which did not maintain offices outside of New York State and accordingly issued a Notice of Deficiency in the sum of \$1,989.85.

3. During the years 1965 and 1966, petitioner, John J. McGlew, was an attorney specializing principally in the fields of patent, trademark and copyright law. He was licensed to practice law in New York and the District of Columbia. He was registered to practice law before the United States Patent Office. He was not licensed to practice law in New Jersey.

4. Petitioner was a partner in the law firm of McGlew & Toren, Esqs. during the years 1965 and 1966. The office of the partnership was located at 28 West 44th Street in New York City. It filed New York State partnership returns in which it allocated all of its income to New York State. The partnership billed clients for services rendered by him. All of his income for legal services rendered was received from the partnership. The partnership stationery did not list a New Jersey address. The partnership paid him \$65.00 a month during the year 1965 and \$70.00 a month during the year 1966 for the rental of an office in his home in New Jersey.

5. Petitioner, John J. McGlew, was a resident of the State of New Jersey during the years 1965 and 1966. He lived in a home located in Hasbrouck Heights, New Jersey. He used one room in his home as an office. He was listed as a patent attorney at his home address in the New Jersey phone book. He maintained a sign outside of his home indicating that he was a patent attorney. He conducted business with partnership clients at the office in his home.

CONCLUSIONS OF LAW

A. That petitioner, John J. McGlew, although a nonresident, was not entitled to allocate the partnership income received by him from McGlew & Toren, Esqs. during the years 1965 and 1966 based upon

the number of days worked within and without New York State since such a method of allocation is available only to nonresident employees and officers and not to nonresident partners in accordance with the meaning and intent of NYCRR 131.16.

B. That since petitioner, John J. McGlew, failed to submit proof of any other methods of equitably allocating such income received during the years 1965 and 1966 from sources within and without New York State, all of said income is considered derived solely from New York sources in accordance with the meaning and intent of section 632(b) of the Tax Law and NYCRR 131.13 and 131.21.

C. That in view of the aforesaid conclusions of law, it is not necessary for the State Tax Commission to decide at this time whether or not the partnership of McGlew & Toren, Esqs., or petitioner, John J. McGlew, maintained a bona fide office outside of New York State during the years 1965 and 1966.

D. That the petition of John J. McGlew is denied and the Notice of Deficiency issued April 11, 1969, is sustained.

DATED: Albany, New York

March 29, 1972

STATE TAX COMMISSION

Norman Gellman

COMMISSIONER

Robert Manley

COMMISSIONER

Milton Korn

COMMISSIONER