

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of the

ESTATE OF KENNETH C. ROYALL

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) 1968

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

State of New York
County of Albany

Martha Funaro , 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 4th day of September , 19 73, she served the within Notice of Decision (or Determination) by (certified) mail upon the Estate of Kenneth C. Royall (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Estate of Kenneth C. Royall
c/o Kenneth C. Royall, Jr., Co-Executor
and Margaret B. Royall
64 Beverly Drive
Durham, North Carolina 27707
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

4th day of September , 1973

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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ESTATE OF KENNETH C. ROYALL

For a Redetermination of a Deficiency or
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State of New York
County of Albany

Martha Funaro , 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 4th day of September , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Edward Clark

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Edward Clark
Peat, Marwick, Mitchell & Company
P.O. Box 18768
Raleigh, North Carolina 27609

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

4th day of September , 1973

Lynn Wilson

Martha Funaro



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 ROQK

SECRETARY TO

COMMISSION

STATE TAX COMMISSION

~~XXXXXXXXXXXX~~ Mario A. Procaccino,
PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

September 4, 1973

Estate of Kenneth C. Royall
c/o Kenneth C. Royall, Jr., Co-Executor
and Margaret B. Royall
64 Beverly Drive
Durham, North Carolina 27707

Dear Mr. & Mrs. Royall:

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

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of the	:	
ESTATE OF KENNETH C. ROYALL	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

Petitioner, Estate of Kenneth C. Royall, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1968.

(The case was submitted for decision on information contained in the file).

ISSUE

Is the taxpayer liable for New York income tax on payments made to him while taxpayer was a nonresident, if the payments were either paid as (a) a pension or, (b) payments to consult and not compete?

FINDINGS OF FACT

1. Petitioner, Estate of Kenneth C. Royall, timely filed a New York State income tax return for the year 1968.
2. A Notice of Determination of deficiencies in personal income taxes for the year 1968, was issued on February 28, 1972, against the taxpayer under File No. 8-19291302.
3. The taxpayer petitioned for redetermination of the deficiencies.

4. The deceased was a very distinguished New York lawyer who had served as President Truman's Secretary of War. He served many years with a prominent New York law firm and retired at the end of 1967. In 1968, his New York firm made payments to the deceased. The taxability of these payments is in issue. At the time the payments were paid, the deceased had become a North Carolina resident. He paid North Carolina income tax upon the payments.

5. The payments were described as a pension in the agreement between the deceased and his former New York firm. Taxpayer contended they were not merely a pension but also were paid for deceased consultation and noncompetition and therefore should not be taxable as these services would not be performed in New York.

6. The Income Tax Bureau contended that the payments received by taxpayer were a pension based on personal services performed by deceased when he was a New York State resident and therefore the payments received were taxable.

CONCLUSIONS OF LAW

A. The payments received by the deceased were part of a pension on their face and therefore taxable pursuant to 20 NYCRR 134.1 and 20 NYCRR 131.18. It has not been shown how any agreements by the taxpayer, to consult and not to compete, would change the basic status of these payments as a pension or destroy their connection with New York State.

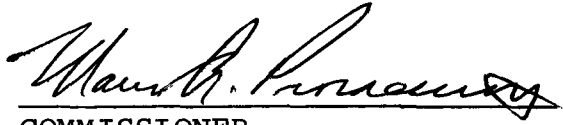
B. The petition is denied and the determination of the deficiency

in income tax is sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York
September 4, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER