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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS M. and ANN T. DEBEVOISE

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) 1967.

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 21st day of June, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon THOMAS M. and ANN T. DEBEVOISE (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. and Mrs. Thomas M. Debevoise
c/o Debevoise & Liberman
Shoreham Building
Washington, D.C. 20005

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
21st day of June, 1974

Martha Funaro

Joyce L. VanPatten

AD-1.30 (1/74)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS M. and ANN T. DEBEVOISE

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) 1967.

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 21st day of June, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon CECIL BROWNE, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cecil Browne, Esq.
Reynolds, Richards, Ely & LaVenture
67 Wall Street
New York, New York 10005

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
21st day of June, 1974

Joyce S. VanPatten

Martha Funaro

AD-1.30 (1/74)

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
June 21, 1974

Mr. and Mrs. Thomas M. Debevoise
c/o Debevoise & Liberman
Shoreham Building
Washington, D.C. 20005

Dear Mr. and Mrs. Debevoise:

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 decision 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,

Nigel G. Wright

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of THOMAS M. and ANN T. DEBEVOISE for a Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1967.	DECISION

Thomas M. and Ann T. Debevoise, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency, issued under date of February 22, 1971, in the amount of $2,563.81, plus interest of $438.79 for a total of $3,002.60, for personal income taxes under Article 22 of the Tax Law for the year 1967.

A hearing was held on May 17, 1972, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City. The petitioners were represented by Cecil Browne, Esq., of Reynolds, Richards, Ely & LaVenture. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioners may allocate income received as a distributive share of partnership profits in a manner different from the allocation shown on the partnership return.

FINDINGS OF FACT

1. Mr. Debevoise is a resident of Washington, D.C. He is a lawyer and has been admitted to the bar in both New York State and Washington, D.C.

2. Mr. Debevoise worked for the Federal Power Commission as a lawyer in Washington, D.C., from 1962 to 1964. In 1964 he opened his own law office in the Shoreham Building, Washington, D.C., specializing in F.P.C. matters as they affect electrical utilities. He developed his own clients and received a retainer from James B. Liberman of Berlack, Israels & Liberman of New York City.

3. Mr. Debevoise became a partner of the firm of Berlack, Israels & Liberman as of January 1, 1965. The firm amended its partnership agreement to take in Mr. Debevoise as a partner, to authorize practice in the District of Columbia by those partners admitted to practice there and to do so under the name of Debevoise, Liberman & Corben. All expenses of both the New York and Washington offices were to be borne by the partnership.

4. As a partner of the Berlack firm, Mr. Debevoise continued what had been his own practice in Washington, D.C. While it had been expected that the firm would attract clients in New York for Mr. Debevoise's Washington office this did not eventuate. In fact, the Washington office contributed a small net profit to the firm over and above Mr. Debevoise's share of the profit.

Mr. Liberman and Mr. Corben were both members of the Berlack firm who were admitted in the District of Columbia although they did not spend any time in the Washington office.

5. The Berlack firm filed a New York partnership return showing that 21.4% of its income came from Washington sources. This was computed by a direct accounting method which is not in issue in this case. Mr. Debevoise's share of the firm's income was also shown to be 21.4% from Washington sources.

6. A nonresident return was filed by petitioners in 1967 showing the amount Mr. Debevoise received from the firm and allocating it by a ratio of 41 days worked in New York out of 287 days worked in the year and multiplying the result by two. This multiplication was based on a theory that a higher share should be shown for New York because of the accounting and other services which the Berlack firm's New York office provided to Mr. Debevoise in Washington. The New York amount of income thus computed was about one third of the New York amount of income attributed to him on the partnership return.

7. The deficiency in issue attributes to Mr. Debevoise the amount of New York income shown on the Berlack partnership return.

CONCLUSIONS OF LAW

It is clear that Mr. Debevoise's Washington office was in substance a part of the New York law firm of Berlack, Israels & Liberman. It is also clear that Mr. Debevoise was a partner in the Berlack firm and that the amounts he received were his share

of the partnership income of that firm. Such a share of partnership income is considered to be derived from the same sources as from which the firm's income is derived. This is true even for a partner who spends all of his time in only one location whether in or out of New York State. The tax return of the Berlack firm and the deficiency herein are based on this theory.

The petitioner's arguments here are either that the Washington office was a separate law firm, which would exault form over substance, or that petitioner's computations are a better method of direct accounting of the Berlack firm's New York income than the method used by the firm itself, which has not been shown to be true in fact or valid in law.

DECISION

The petition is denied and the deficiency is found to be correct and is due together with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York
June 21, 1974

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER