

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES E. and NEVA K. RYDER

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) 1966 and 1967.:

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

State of New York
County of Albany

JANET MACK

, 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 23rd day of December, 1974, she served the within
Notice of Decision (~~xx Determination~~) by (certified) mail upon JAMES E. and

NEVA K. RYDER (~~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. James E. Ryder
Ryder, McAulay & Hefter
20 Exchange Place, Suite 5400
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~~
~~xx~~) 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

23rd day of December, 1974.

Martha Surran

Janet Mack



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
December 23, 1974

Mr. and Mrs. James E. Ryder
Ryder, McAulay & Hefter
20 Exchange Place, Suite 5400
New York, New York 10005

Dear Mr. and Mrs. Ryder:

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,


Nigel G. Wright

Enc.

HEARING OFFICER

cc: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JAMES E. and NEVA K. RYDER	:	DECISION
	:	
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1966 and 1967.	:	
	:	
	:	

James E. and Neva K. Ryder, filed a petition for the redetermination of a deficiency, dated February 24, 1970 in the amount of \$1,282.92 plus interest of \$186.81 for a total of \$1,469.73 in personal income tax under Article 22 of the Tax Law for the years 1966 and 1967.

A hearing was duly held on September 12, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioners were not represented. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a nonresident attorney who receives income from a New York partnership can allocate some of that income to out-of-state sources under Article 22 of the Tax Law and whether he should be able to so allocate in the

discretion of the Commission under section 637(d) of the Tax Law or section 131.21 of the Regulations.

FINDINGS OF FACT

1. Petitioners, Mr. and Mrs. Ryder, are residents of Chatham, New Jersey, and nonresidents of New York.

2. The petitioner, James Ryder, is an attorney admitted to practice in New York State. During the years in question, Mr. Ryder was a partner in the law firm of Davis, Hoxie, Faithful & Hopgood, 30 Broad Street, New York, New York. He is not admitted in New Jersey or any other state. He is registered to practice before the United States Patent Office and his practice is confined to patent and related matters. His income during the years in question, came from his distributive share of the income of that partnership. He appears frequently before Federal courts in many states on matters related to patents.

3. The partnership of Davis, Hoxie, Faithful & Hopgood's practice was largely confined to patent, trademark and related matters. During the years in question, it had a type of correspondent relation with a Washington, D. C. law firm from whose office all of its papers on patent matters were processed. The income of the partnership was distributed to the individual partners by allocating fees, 20% to the originating partner, the remainder to all partners based on comparative billable hours with each partner bearing a pro rata share of overhead.

4. The partnership of Davis, Hoxie, Faithful & Hopgood filed partnership returns for the years in question. On these returns

it claimed the Washington law firm as its Washington office and allocated its income on the basis of a factor method based in part in its billings and in part on the amounts paid out to its partners, employees and the Washington law firm. This allocation, however, has been disallowed by the Income Tax Bureau and the firm has not contested the matter.

5. Petitioners filed nonresident New York State income tax returns for 1966 and 1967. On these, Mr. Ryder listed his income from the partnership and allocated a part of such income to out-of-state sources. This was done by the method which had also been used by the law firm. The remainder, 78.48% in 1966 and 79.12% in 1967, he included in his tax computation. Petitioners also filed amended returns for both years in March 1970. On these returns Mr. Ryder's partnership income was also allocated but this time on the basis of billable hours inside and outside of New York, but counting time worked at his New Jersey home as New York time.

6. The deficiency notice in this case is based on the inclusion in income of the entire amount of Mr. Ryder's partnership income. This was done primarily because the partnership had no office outside the state and therefore all of its income was deemed to be New York income.

7. There is no evidence in this case that either Mr. Ryder or the law firm carries on business from any fixed location in another jurisdiction or that the income therefrom is considered to have its source in another jurisdiction for purposes of an

income tax or that any income tax was paid to another jurisdiction.

CONCLUSIONS OF LAW

The petitioner, Mr. Ryder, must be deemed to be doing business solely in New York (see Carpenter v. Chapman 276 App. Div. 634; Tremble v. Bragalini 15 AD 2d 208).

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

DATED: Albany, New York
December 23, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER