

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ISAAC and YOLANDA ASSAEL

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 ~~(30)~~ 22 of the  
Tax Law for the Year(s) 1969 and 1970.

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 26th day of November, 1975, she served the within Notice of Decision ~~XXXXXXXXXXXXXXXXXX~~ by (certified) mail upon ISAAC and YOLANDA ASSAEL ~~XXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Isaac Assael  
Hunt Lane  
North Salem, 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 ~~XXXXXXXXXXXX~~ ~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

26th day of November, 1975

Mary Tracy

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227  
AREA CODE 518

ADDRESS YOUR REPLY TO  
Mr. Wright  
Mr. Coburn  
Mr. Leisner  
(518) 457-3336

**DATED:** Albany, New York  
**November 26, 1975**

**Issac and Yolanda Assael  
Bunt Lane  
North Salem, New York**

**Dear Mr. and Mrs. Assael:**

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

Please take further notice that pursuant to  
Section **(X) 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 C. WRIGHT**  
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ISAAC and YOLANDA ASSAEL :  
for a Redetermination of a Deficiency : DECISION  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the Years 1969 and 1970. :

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Isaac and Yolanda Assael, now residing at Hunt Lane, North Salem, New York, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the years 1969 and 1970.

Said deficiency was asserted by notice dated February 26, 1973, bearing File No. 0-53221812 and is in the amount of \$4,642.46 plus interest of \$638.39 for a total of \$5,280.85.

A hearing was duly held on October 24, 1974, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner appeared but was not represented. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Alexander Weiss, Esq. The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are: (A) the propriety of certain business deductions and (B) whether income received from a partnership can be allocated to out-of-state sources.

FINDINGS OF FACT

1. Petitioners are nonresidents of New York. They reside at Hunt Lane, North Salem, New York.

2. Mr. Assael is a certified public accountant. During the years in question he was a partner in the firm of Kraft, Fischman & Assael, which maintained an office at 342 Madison Avenue, New York, New York. Mr. Assael has served on many professional committees concerned with tax matters and is a lecturer on tax matters for an extension school. These require constant research on tax matters, the writing of reports and the preparation of lectures.

3. Mr. Assael expended certain amounts for automobile expenses and for other business expenses including entertainment and the expenses of maintaining an office in his home. The amounts of the expenditures are not in dispute. It is found that the partnership itself did not deduct the same amounts that petitioners deducted.

4. Petitioners live in a five bedroom split level house. Mr. Assael set aside one room for his work. It contains a desk, a leather chair, a file cabinet, shelves and a carpet. Occasionally Mr. Assael would see individual clients there but typically he

would be writing or using his extensive tax library. There was no indication in front of the house that the occupant was a C.P.A. The property was zoned as residential.

5. The partnership agreement provided that the firm would pay the costs of entertaining clients but it states also that, "this policy shall not extend to the reimbursement of any of the partners for home entertaining costs, except by mutual agreement, nor shall it in any event apply to the cost of entertaining prospective clients, which costs shall be borne by the individual partners."

6. The partnership agreement has no provision pertaining to the maintenance of an office at home. By informal agreement among the partners, however, each partner did maintain a home office.

7. Mr. Assael received income from the partnership in the form of a stated share of the net profits and also a stated salary which was deducted by the partnership from income before net profits were computed.

8. The partnership received its income from clients all over the country. It did not report any such income as non-New York income although it itself is not subject to tax. About three-fourths of Mr. Assael's own clients were located outside of New York State. Mr. Assael included in his income only two-thirds of the amount he received from the partnership. The deficiency notice disallows the disputed expenses and includes all of Mr. Assael's partnership income as New York income.

CONCLUSIONS OF LAW

A. The automobile and business expenses are properly deductible.

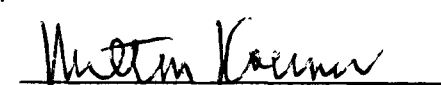
B. The income which Mr. Assael received from the partnership must be considered entirely New York income. The partnership itself received all of its income in New York. It could not allocate some income to outside sources since it had no office outside of the State. The home of Mr. Assael cannot qualify as such an office within the meaning of the statute. The entire income of the partnership being derived from New York sources it follows that what Mr. Assael received was from New York sources. No exception can be made for guaranteed payments.

C. The deficiency in issue is erroneous in part and is recomputed to be \$3,173.84 plus interest to the date thereof of \$426.65 for a total of \$3,600.49 together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
November 26, 1975

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER