

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN S. and MARIAN W. THOMAS

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year ~~(x)~~ 1970.

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

State of New York
County of Albany

MARY GROFF, 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 17th day of December, 1975, she served the within Notice of Decision ~~(or Determination)~~ by (certified) mail upon JOHN S. and MARIAN W. THOMAS ~~(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. John S. Thomas
28 Spindletree Road
Levittown, Pennsylvania 19054

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
17th day of December, 1975.

Janet Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-3850
457-3850

DATED: Albany, New York
December 17, 1975

Mr. and Mrs. John S. Thomas
28 Spindletree Road
Levittown, Pennsylvania 19054

Dear Mr. and Mrs. Thomas:

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

Please take further notice that pursuant to
Section (a) **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: ~~XXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN S. and MARIAN W. THOMAS : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1970. :

Petitioners, John S. and Marian W. Thomas, 28 Spindletree Road, Levittown, Pennsylvania, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1970.

A calendar call was scheduled before Honorable A. Bruce Manley, State Tax Commissioner, at the offices of the State Tax Commission, Room 215, Building 9, State Campus, Albany, New York, on December 19, 1974, at 11:00 A.M.

Notice of said hearing was given to petitioners. No one appeared for the taxpayers. A default dated January 28, 1975, was duly recorded.

Petitioners notified the State Tax Commission on February 21, 1975, that they had previous to the formal hearing requested that said hearing be rescheduled since petitioner, John S. Thomas, had to be in California on business on the appointed date, and requested that the default in said matter be opened. Petitioners' request was granted on March 3, 1975, and they agreed to submit the case for decision on information contained in the file.

ISSUES

I. The first issue in this case is whether petitioners are taxable as nonresidents on all partnership distributable income received from the New York State partnership of Brett & Kerr.

II. The second issue in this case is the determination of the correct amount of business expense deductions allocable to New York State.

FINDINGS OF FACT

1. Petitioners, John S. and Marian W. Thomas, timely filed a New York State income tax nonresident return for the year 1970.

2. A Notice of Determination of deficiencies in personal income taxes for the year 1970 was issued on March 25, 1974, against the taxpayers under File No. 0-53224569.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. Two principals, Brett & Kerr, organized a management consulting business and invited petitioner, John S. Thomas, to join the firm under the following terms. Petitioner was to be paid a salary of \$30,000.00 per year. However, since the principals were unable to assure petitioner of this income in the event earnings were insufficient, they agreed to give him first preference to earnings from the business. In return for this uncertain salary, the principals agreed to give petitioner, 10% of any earnings that exceed \$102,000.00 annually. The \$102,000.00 sum was the total of \$30,000.00 to petitioner, John S. Thomas, and \$36,000.00 to each principal. Petitioner contends that he did not participate in the management of the business and was viewed more as an employee than a partner.

5. Petitioner is listed as a 10% partner under Schedule K on the Brett & Kerr partnerships' New York State partnership return for 1970.

6. Petitioner, John S. Thomas' income from the Brett & Kerr partnership for the taxable year in question was \$21,023.00.

7. In 1970, Brett & Kerr partnership did not allocate income within or without New York State.

8. Petitioner contends that the business adjustments of \$3,618.50 were all applicable to his business activities and not to his wife's income as a teacher in Pennsylvania and that such adjustments should not be prorated according to the Federal-New York ratio based upon a figure for gross income which includes his wife's Pennsylvania income.

CONCLUSIONS OF LAW

A. Under the Tax Law, section 637(a), the allocation of a member partner's distributive share of partnership income is based on the allocation formula of the partnership. Further, section 637(b) provides that no effect shall be given to a provision in the partnership agreement which allocates to a partner as income outside New York a greater portion of his distributive share of partnership income than the ratio of partnership income from sources outside New York to partnership income from all sources. Therefore, all of petitioner's partnership distributable income would be includable for New York State purposes.

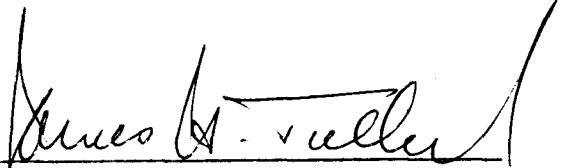
B. Petitioner's income from the Brett & Kerr partnership is not considered wages, since no effect shall be given to a provision in the partnership agreement which characterizes payments to the partner as being a salary for services. Tax Law section 637(b)(1).

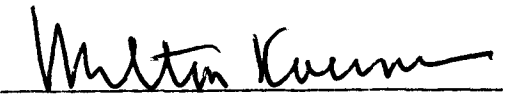
C. Petitioner, John S. Thomas' business deduction of \$3,618.50 was all applicable to his business activities and not to his wife's income as a teacher in Pennsylvania. Therefore, such adjustments must be prorated according to the Federal-New York ratio using a proration in which gross income excludes his wife's Pennsylvania income. The deficiency shall be recomputed accordingly.

D. The petition is denied and the determination of the deficiency in income tax except as modified is sustained.

DATED: Albany, New York
December 17, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

THOMAS, JOHN S. & MARION W.
PERSONAL INCOME 1975

vacated 4/7/75

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN S. & MARIAN W. THOMAS

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 ~~(x)~~ 22 of the
Tax Law for the Year ~~(x)~~ 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 28th day of January , 1975, she served the within Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon John S. and Marian W. Thomas (~~XXXXXXXXXXXX~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. John S. Thomas
28 Spindletree Road
Levittown, Pennsylvania

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 (~~XXXXXXXXXXXX~~) petitioner.

Sworn to before me this
28th day of January , 1975.

Richard D. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

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

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
January 28, 1975

Mr. & Mrs. John S. Thomas
28 Spindletree Road
Levittown, Pennsylvania

Dear Mr. & Mrs. Thomas:

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

Please take further notice that pursuant to
Section (a) **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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN S. & MARIAN W. THOMAS : DEFAULT ORDER
for Redetermination of Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year :
1970. :
:

Petitioners, John S. and Marian W. Thomas, filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970.

File No. 0-53224569.

A calendar call on the petition was scheduled before Honorable A. Bruce Manley, State Tax Commissioner, at the offices of the State Tax Commission, Room 215, Building 9, State Campus, Albany, New York, on December 19, 1974, at 11:00 A.M. Notice of said calendar call was given to petitioners. Petitioners did not appear at the calendar call. A default has been duly noted.

Now on motion of the attorney for the Department of Taxation and Finance, it is

ORDERED that the petition of John S. and Marian W. Thomas
be and the same is hereby denied.

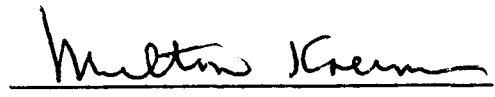
DATED: Albany, New York

January 28, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER