

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition           | : |          |
| of                                      | : |          |
| TONY BENNETT                            | : | DECISION |
| for Redetermination of a Deficiency or  | : |          |
| for Refund of Personal Income Taxes     | : |          |
| under Article 22 of the Tax Law for the | : |          |
| Years 1968, 1969 and 1970.              | : |          |

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Petitioner, Tony Bennett, c/o Mason & Co., 369 Lexington Avenue, New York, 10017, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1968, 1969 and 1970. (File No. 01027).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 16, 1976, at 1:15 P.M. Petitioner appeared by Robert Parks, CPA of Mason and Company. The Income Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq., of counsel).

#### ISSUE

Whether certain income received by petitioner, a non-resident, constitutes "royalties" excludable from New York taxable income, or compensation for personal services which are attributable to New York sources.

FINDINGS OF FACT

1. Petitioner, Tony Bennett, resided during the years in question, in River Edge, New Jersey and was a nonresident of New York.

2. Petitioner is a well known popular singer. Most of petitioner's services, both in New York State and elsewhere, are performed by him as an employee of Tony Bennett Enterprises, Inc. from which he draws a salary. The tax treatment of such salary is not involved in this case.

3. Petitioner received fees during the years in question from CBS Records for the recording of phonograph records. These fees consisted of two parts: (a) a nonreturnable payment to be made within fourteen days after the services are rendered at each recording session, computed at the "union scale" rate and charged against any royalties to be received; (b) another sum denominated a "royalty", and which is measured at 7% of the suggested retail list price of the record, exclusive of any taxes, when the performance of petitioner appears on both sides of said record, and one-half of such percentage of the suggested retail list price less all taxes when the performance of the petitioner appears on only one side of such record.

4. Petitioner did not receive or retain any proprietary interest in the recordings he made.

CONCLUSIONS OF LAW

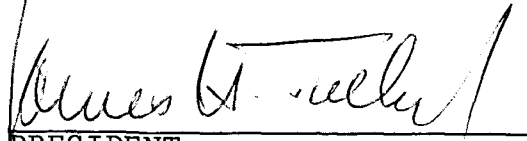
A. That the fees and payments received by the petitioner from the recordings set forth in Finding (3) above represented payments for personal services performed by the petitioner within the State of New York, and no portion thereof constitutes "royalty" income excludable from income, for tax purposes.


B. That the income received by the nonresident petitioner from CBS Records constituted additional income attributable to New York sources within the intent and meaning of section 632 of the Tax Law.


C. That the Statement of Audit Changes and Notice of Deficiency are correct and the petition herein is denied.

DATED: Albany, New York  
November 19, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER