

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD CARTER, JR. &

AFFIDAVIT OF MAILING

~~BETTY H. CARTER~~
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1965, :
1966 and 1967.

State of New York
County of Albany

Donna Scranton, 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 November, 1976, she served the within Notice of Decision by (certified) mail upon Howard & Betty H. Carter, Jr. ~~(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. Howard Carter, Jr.
1320 Rahway Road
Scotch Plains, New Jersey 07060

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ 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 November, 1976.

Donna Scranton

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD CARTER, JR. &

BETTY H. CARTER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1965, :
1966 and 1967.

State of New York
County of Albany

Donna Scranton, 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 November, 1976, she served the within
Notice of Decision by (certified) mail upon James F.
Watson, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: James F. Watson, Esq.
1 Wall Street
New York, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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 November, 1976

Donna Scranton

Janet Trach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 23, 1976

TELEPHONE: (518) ~~457-3850~~

Mr. and Mrs. Howard Carter, Jr.
1320 Railway Road
Scotch Plains, New Jersey 07060

Dear Mr. and Mrs. Carter:

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.

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. They
will be referred to the proper party for reply.

Very truly yours,

PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HOWARD CARTER, JR. & :
BETTY H. CARTER : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1965, 1966 and 1967. :

Howard Carter, Jr. and Betty H. Carter, 1320 Rahway Road, Scotch Plains, New Jersey 07060, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency dated April 13, 1970, in personal income taxes under Article 22 of the Tax Law for the years 1965, 1966 and 1967. (File No. 73201570.)

A hearing was duly held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 8, 1972, before Nigel G. Wright, Hearing Officer. Petitioners were represented by James F. Watson, Esq., of Gifford, Woody, Carter and Hays. The Income Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq., of counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the allocation of income to New York of an attorney admitted to practice in both New Jersey and New York.

FINDINGS OF FACT

1. Petitioners are residents of Scotch Plains, New Jersey.
2. Howard Carter, Jr. is an attorney admitted to practice in both New York and New Jersey. In New York he is the senior partner in the firm of Gifford, Woody, Carter and Hays with offices at One Wall Street, New York City.
3. In New Jersey, Mr. Carter has subleased a one-room office from a law firm at 120 Depot Park, Plainfield, New Jersey. He has maintained this office for over 10 years and previously had a different office in Plainfield, New Jersey, for over 10 years. A secretary is maintained at that office and New Jersey unemployment taxes are paid. The New York firm reimburses Mr. Carter for the expenses of this office. Mr. Carter has his own letterhead for use at his New Jersey office.
4. Mr. Carter's clients include the United National Bank of Plainfield, Crosswood Products of Roselle, New Jersey, and a hospital and a church in New Jersey. He handles many New Jersey estates.

5. Mr. Carter spends about one-third of his time working at or from his New Jersey office and two-thirds of the time at or from his New York office. Mr. Carter's time at his New Jersey office is spent entirely upon New Jersey matters, there being no indication in the record to the contrary. Mr. Carter's time at his New York office is spent at least a small part on New Jersey matters. Any help he receives on New Jersey matters in either office is from a lawyer of the partnership who is admitted to practice in both New York and New Jersey. The firm does not keep time sheets on each attorney.

6. The fees which Mr. Carter earns from his New Jersey practice are paid over to the New York partnership. The only income which Mr. Carter receives from his law practice is a share of the total profits of the New York partnership which share is specified in the partnership agreement.

7. Mr. Carter's fees from his New Jersey practice were about 80% of his share of the New York partnership profits in 1965 but in 1966 and 1967 these fees exceeded such profits even after the fees were reduced by direct New Jersey expenses. No relation appears to exist between the New Jersey fees and the amount of the share of the New York profits.

8. The gross receipts from Mr. Carter's New Jersey clients were about 11% of the firm's gross receipts in 1965 and were 17%

and 18% respectively in 1966 and 1967. (Gross receipts from the firm's other New Jersey clients are either unknown or nominal.) The direct expenses attributable to the New Jersey fees were very small and those attributable solely to New York income are unknown. The firm's total expenses were about half of its gross income.

9. Mr. Carter reported on his New York tax returns only two-thirds of his income from the New York partnership. In doing this, Mr. Carter was following the terms of an agreement settling with the Income Tax Bureau a previous controversy for the year 1954 on the same issue involved in this hearing but which did not reach the level of a Commission hearing.

10. The deficiency asserted against Mr. and Mrs. Carter for the three years amounts to \$8,189.92 plus interest to the date of the deficiency of \$1,917.99 for a total of \$10,107.91.

CONCLUSIONS OF LAW

The office of Mr. Carter in New Jersey may be considered to be an office of the New York partnership which bears his name, among others. The partnership therefore clearly carries on business in New Jersey (Reg. 20 NYCRR 131.4(b), 131.12) and may allocate its income between New York and non-New York sources. Mr. Carter's distributive share of such income thus includes non-New York income.

Since the method of allocation used by the partnership is not clear on this record, ordinarily any allocation would for that reason be denied. However, since Mr. Carter has relied on a prior informal ruling of the Department, some approximation will be permitted. The ratio used to measure New Jersey income of one-third, apparently based upon Mr. Carter's time spent in New Jersey, is found to be inaccurate since it does not reflect the time of Mr. Carter or of other attorneys of the firm working in New York on New Jersey matters. A ratio based on gross receipts would appear to be more accurate. Accordingly, the firm and Mr. Carter will be allowed to use an estimated ratio of one-sixth to measure its New Jersey income. The deficiency against Mr. and Mrs. Carter will be recomputed using a five-sixths ratio for New York to total income.

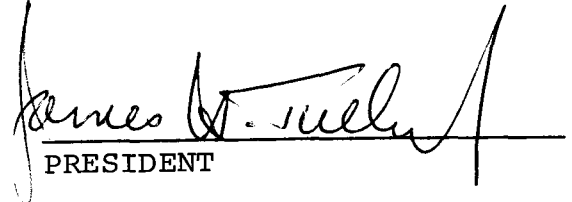
DECISION

The deficiency is found to be incorrect in part and is recomputed to be \$4,126.71 plus interest of \$718.87, the date thereof for a total of \$4,845.58.

Such sum is due together with such further interest as
shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
November 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER