

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

C. CLARK & JANE W. STOVER

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 C. Clark & Jane W.
Stover ~~(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. C. Clark Stover
31 Warwick Road
Colonia, New Jersey 07067
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

C. CLARK & JANE W. STOVER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 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 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 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 M. Smith



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. C. Clark Stover
11 Warwick Road
Colonia, New Jersey 07067

Dear Mr. and Mrs. Stover:

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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
C. CLARK & JANE W. STOVER	:	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.	:	

C. Clark and Jane W. Stover, filed a petition pursuant to section 689 of the Tax Law for the redetermination of a deficiency dated March 16, 1970, in personal income taxes under Article 22 of the Tax Law for the years 1965, 1966 and 1967. (File No. 73254715).

A hearing was held on February 8, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer.

The 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 to New York of the income of a lawyer admitted to practice in both New York and New Jersey.

FINDINGS OF FACT

1. Mr. and Mrs. Stover reside at 31 Warwick Road, Colonia, New Jersey.

2. Mr. Stover is an attorney admitted to practice in both New York and New Jersey.

3. Mr. Stover is a member of the firm of Gifford, Woody, Carter and Hays which has offices at One Wall Street, New York City. Two other of the firm's partners were admitted in both states; Mr. Howard Carter, Jr. and Mrs. Hadley S. King, Jr. Other partners were admitted only in New York.

4. Mr. Stover maintains office space in one small room of his home in New Jersey; 31 Warwick Road, Colonia, New Jersey. It is not used for conferences with clients. This address is listed in New Jersey bar directories. There is no professional sign or "shingle" at this address as such is prohibited by the local zoning ordinance. Although the New York firm reimbursed other partners (Mr. Carter and Mr. King) for the expenses of office space in New Jersey, there is no indication that Mr. Stover was similarly reimbursed.

Mr. Stover used this office space principally on evenings and weekends since he spent business days in the firm's New York office.

5. Mr. Stover's share of the profits of the New York partnership was at a percentage stated in the partnership agreement and ranged for the three years from \$35,000.00 to \$55,000.00. Mr. Stover received fees from New Jersey clients of about; \$1,000.00 in 1965, \$1,700.00 in 1966 and \$5,800.00 in 1967. The largest fees were from estates, one in 1966 and two in 1967. All other clients were individuals. These New Jersey fees were paid over to the New York partnership.

6. Mr. Stover allocated his share of partnership profits on the basis of a fraction of the denominator of which was the total fees received by the firm's lawyers from both New York and New Jersey clients and the numerator of which was the total of the fees received by the firm from only New Jersey clients.

7. The deficiency against Mr. and Mrs. Stover for the three years amounts to \$2,129.99 plus interest to the date of the deficiency of \$327.91 for a total of \$2,457.90.

CONCLUSIONS OF LAW

The office maintained by Mr. Stover cannot be accepted as an office of the New York partnership. The claimed office is not in a professional building but in fact is in a residence considering

the nature of the firm's business and considering and also comparing the location of each of the firm's activities inside and outside of New York, the nature of each such activity and the regularity, continuity and permanency of such activity. It follows that the partnership is not carrying on its own business at the location of Mr. Stover's residence. Since, however, it has been decided in the companion case of a member of the same firm, Mr. Howard Carter, the partnership did maintain one office outside of New York. It follows that the partnership can allocate its income between New York and non-New York sources. It has been held in the companion case that the New York ratio may be properly estimated at five-sixths.

DECISION

The deficiency is recomputed to be \$140.62 with net interest to the date thereof due to the petitioner of 58 cents for a total of \$140.04.

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