

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT E. EASTMAN and ANNE S. EASTMAN

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)~~ :
1971, 1972 and 1973

State of New York
County of Albany

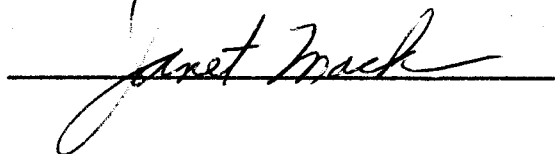
Violet Walker, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of June, 1977, she served the within
Notice of Decision by ~~(certified)~~ ^{certified} mail upon Harry Offutt, III, CPA

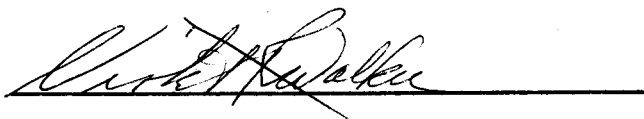
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harry Offutt, III, CPA
969A Beachland Boulevard
Post Office Box 3446
Vero Beach, Florida
and by depositing same enclosed in a postpaid properly addressed 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

14th day of June, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT E. EASTMAN and ANNE S. EASTMAN

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)~~
1971, 1972, 1973

State of New York
County of Albany

Violet Walker, 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 14th day of June, 1977, she served the within
Notice of Decision by ^{Certified} ~~(REGISTERED)~~ mail upon Robert E. and Anne S.

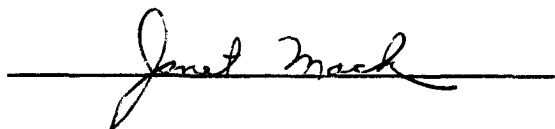
Eastman ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Robert E. Eastman
351 Palmetto Point
Vero Beach, Florida 32960
and by depositing same enclosed in a postpaid properly addressed 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)~~
~~xxx 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

14th day of June, 1977.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 14, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-1723**

Mr. and Mrs. Robert E. Eastman
351 Palmetto Point
Vero Beach, Florida 32960

Dear Mr. and Mrs. Eastman:

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 D. 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 Petitions :
of :
ROBERT E. EASTMAN and : DECISION
ANNE S. EASTMAN :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the :
Years 1971, 1972 and 1973. :

Petitioners, Robert E. Eastman and Anne S. Eastman, 351 Palmetto Point, John's Island, Vero Beach, Florida 32960, filed petitions for a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971, 1972 and 1973. (File No. 13159).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on October 6, 1976, at 10:00 a.m. Petitioners appeared by Harry Offutt, III, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the \$1,000.00 capital loss incurred by petitioners on the sale of bonds while New York residents was includible in the computation of New York adjusted gross income of the petitioners on a nonresident income tax return for 1971, a subsequent year.

II. Whether the petitioners, nonresidents, could allocate a portion of their income without New York State, based on work performed by petitioner, Robert E. Eastman, at his home in Florida, and whether the planned absence from New York of petitioner, Robert E. Eastman, affords a basis for allocation of salary income from his New York corporate employer in 1971 and 1972.

III. Whether the petitioners properly allocated to sources outside New York State, deferred compensation and profit sharing paid by Robert E. Eastman Co., Inc. to petitioner, Robert E. Eastman, in 1973.

IV. Whether income received by petitioner, Robert E. Eastman, in 1973, pursuant to an agreement for his consulting and advisory services with his former corporate employer, was includible in his New York adjusted gross income for that year.

FINDINGS OF FACT

1. Petitioners, Robert E. Eastman and Anne S. Eastman, filed a New York State nonresident income tax return for the year 1971. This return contained a reduction of gross income by \$1,000.00, based on a carry-forward loss on the sale of school bonds at a time when petitioners were New York residents. Petitioners reported wages paid Robert E. Eastman by Robert E. Eastman Co., Inc. (hereinafter "the corporation") of \$157,091.46, and allocated those wages based on 54 days worked in New York out of a total of 234 days worked during the year. This computation resulted in an allocation of \$36,251.88 in wages to New York.

Petitioners, Robert E. Eastman and Anne S. Eastman, filed a New York State nonresident income tax return for the year 1972. Thereon, wages paid petitioner, Robert E. Eastman, were \$181,552.45 which wages were apportioned on the basis of 36 days worked in New York out of a total of 234 days worked during the year resulting in an allocation of \$27,386.06 in wages to New York.

3. Petitioners, Robert E. Eastman and Anne S. Eastman, filed a New York State nonresident income tax return for the year 1973. Thereon, they reported total income of \$595,701.00, \$261,913.98 of which constituted distributions from a profit-sharing plan and deferred compensation. In addition, \$24,000.00 was paid petitioner, Robert E. Eastman, in 1973, pursuant to a contract for his advisory and consulting services dated January 5, 1973. Petitioners apportioned and allocated to New York \$101,876.00 of the \$261,913.98, based on their calculation under section 131.18 of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York. The calculation employed utilized, in addition to figures contained in paragraphs 1 and 2 above, total compensation of \$374.27 for one week in 1973 and total compensation of \$110,766.52 for 1970, the same figure being listed as the "New York State portion".

4. On December 23, 1974, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, Robert E. Eastman and Anne S. Eastman, stating additional personal income tax liability of \$13,428.52 plus interest to date for the year 1971. This additional

liability was stated to be predicated on the absence of substantiation that services performed outside New York State for the employer could not have been performed in New York State and thus all wages were taxable to New York since none of the services performed outside were done as a requirement of the employer. A further basis of the additional liability was a \$1,000.00 capital loss which was disallowed in that a loss on intangibles is not deductible by a nonresident, that loss not being attributable to a business or profession carried on within the state. Accordingly, a Notice of Deficiency dated December 23, 1974, was issued to petitioners in the sums stated in the Statement of Audit Changes plus interest.

5. On June 30, 1975, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, Robert E. Eastman and Anne S. Eastman, for the years 1972 and 1973, stating additional personal income tax due of \$22,293.75 and \$26,673.35 respectively, plus interest to date. The basis for the calculation of tax due was stated to be that income earned in 1972 and 1973 from the corporation was New York income, and since no services were performed outside New York State for 1972 and prior years, the entire income for 1973 was New York income. Accordingly, a Notice of Deficiency dated June 30, 1975 was issued to petitioners in the above sums plus interest.

6. Petitioners, Robert E. Eastman and Anne S. Eastman, were residents of Florida during the years in issue.

7. Petitioner, Robert E. Eastman, after working in prominent positions in the broadcasting business, including that of president of the ABC Radio Network in 1957, founded the corporation in 1958. The corporation was engaged in the national spot radio advertising business, representing radio stations across the nation in the procurement of advertisers for these radio stations. This type of representative business is often dependent on the personal services and reputation of an individual, in this case petitioner, Robert E. Eastman.

8. Petitioner, Robert E. Eastman, successfully built the business of the corporation by continual personal solicitation of markets and clients which required his extensive travel, which on a normal work year totalled 75 trips. The corporation expanded to ten offices throughout the country due to these efforts. To induce talented personnel to work for the corporation, such persons were permitted to purchase shares of stock in the corporation. A further inducement to attract and maintain good personnel was the intention of petitioner, Robert E. Eastman to retire at the age of sixty in 1973, which intention was related to certain of the corporate executives, thereby making possible the continuation of the business by his successors.

9. Petitioner, Robert E. Eastman, owned approximately 89% of the Class A voting stock of the corporation and his son, Robert Eastman, II owned the balance. Petitioner, Robert Eastman owned

approximately 40 percent of the Class B non-voting stock, and, when his shares are added to those held by his family members, acquired by gift from petitioner, Robert E. Eastman, 66% of the Class B stock was owned by the "Eastman family".

10. To assure the continuance and the subsequent success of the corporation after his retirement as chief executive officer, petitioner, Robert E. Eastman, decided to gradually decrease the amount of personal contact he had with the corporation's clients and promote thereby increased client reliance on other corporate executives. This decision was discussed with other corporate officers.

11. Initially, petitioner, Robert E. Eastman, spent an increasingly larger portion of time in 1968, 1969 and 1970 in Vermont, where he had a home, thereby reducing his client contact by approximately fifty percent. In late 1970 he moved to Vero Beach, Florida, became a resident of that state and still resides there.

12. The home built in Vero Beach for petitioners had a cabana building approximately thirty feet from the home. Petitioner, Robert E. Eastman, had a separate telephone installed in the cabana and also had files, a desk, a typewriter and a calculator. He used the cabana for his business activities and almost all business calls came through the cabana phone.

13. Petitioner, Robert E. Eastman, worked out of the office in his cabana for the latter part of 1971 and in 1972 as chief executive officer of the corporation and received wages therefor. Most of the work consisted of telephone communications. Consistent with petitioner, Robert E. Eastman's intention to decrease contacts with clients and reduce reliance on him personally, clients were visited only on five or six occasions in 1971 and less in 1972, but no evidence regarding the days spent on such visits was offered.

14. On January 5, 1973, petitioners and other stockholding members of the "Eastman family" entered into a Stock Repurchase Agreement with the corporation. Petitioner, Robert E. Eastman, who resigned as an officer and director of the corporation, also entered into an agreement with the corporation for his advisory and consulting services. The Stock Repurchase Agreement provided that on the closing date, January 5, 1973, the corporation, in consideration for the shares of stock held by the "Eastman family", shall pay \$400,000.00 and pay thereafter one million dollars in payments fixed therein over the next five years. Petitioners, Robert E. Eastman and Anne S. Eastman, were entitled to 41.501% and 22.037% respectively of these payments. Furthermore, "family member" debts to the corporation were discharged (petitioners' debts, including interest, totalled \$68,612.05) and shares owned by the corporation in Eastman Realty Development Corporation, Eastman Broadcasting Company and KAFY, Inc. were assigned to petitioner, Robert E. Eastman.

15. The agreement regarding advisory and consulting services provided for remuneration of \$24,000.00 per year for 42 months but was subject to termination by the corporation based on earlier payment of the amount due for purchase of the Eastman family stock. Provisions were also made for payment of this \$24,000.00 in the event of Robert E. Eastman's death. During 1973, no consultation services were performed in New York.

CONCLUSIONS OF LAW

A. That section 654(c) of the Tax Law provides that a loss accruing prior to a change of status by an individual from resident to nonresident must be accrued for the portion of the taxable year prior to such change of status. That the capital loss incurred by petitioners on the sale of bonds while New York residents was thus not includible in the computation of New York adjusted gross income of petitioners on a nonresident income tax return for 1971, a subsequent year.

B. That petitioner, Robert E. Eastman's duties did not necessitate that he live in Florida and that the days claimed to have been worked in Florida by petitioner, Robert E. Eastman, during the years 1971, 1972 and prior to his resignation in 1973 were worked there by reason of his necessity and convenience and not for the necessity of his employer.

C. That the days claimed to be worked in Florida by petitioner, Robert E. Eastman, during 1971, 1972 and in 1973 prior to his resignation, must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law as determined under regulations promulgated pursuant thereto (20NYCRR 131.16), and that the income received is New York source income includible in New York adjusted gross income.

D. That the deferred compensation and distributions from profit sharing received by petitioner, Robert E. Eastman, in 1973 do not constitute an annuity under 20NYCRR 131.4(d), and this entire amount is includible in New York adjusted gross income pursuant to the computation provided in 20NYCRR 131.18 and consistent with Conclusions B and C, above.

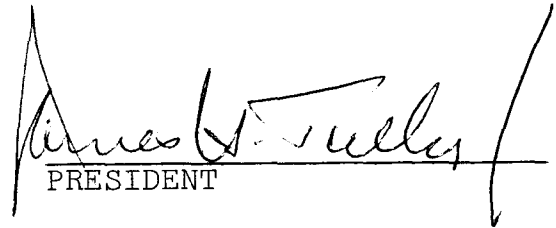
E. That the \$24,000.00 received by petitioner, Robert E. Eastman, in 1973 was income received by a nonresident for consultation services performed without New York State and was not includible in New York adjusted gross income.

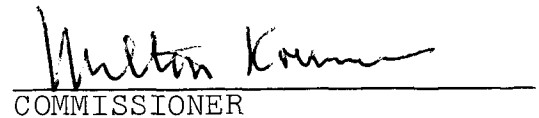
F. That the petition of Robert E. Eastman and Anne S. Eastman protesting additional income tax for 1973 is granted to the extent provided in Conclusion "E", above; that the Income Tax Bureau is hereby directed to accordingly modify

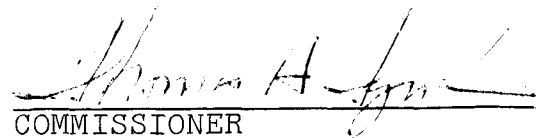
the Notice of Deficiency issued June 30, 1975; and, that, except as so granted, the three petitions filed are in all other respects denied.

DATED: Albany, New York
June 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER