

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JAMES E. RYDER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (2) 22 of the
Tax Law for the Year(s) ~~XXXXXX~~
1968 & 1969

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1 day of September, 1977, he served the within
Notice of Decision by (certified) mail upon James E. Ryder
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: James E. Ryder
1085 Warburton Avenue
Yonkers, New York 10701

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~~
~~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

1 day of September, 1977.

Janet Mack

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

September 1, 1977

**James E. Ryder
1085 Warburton Avenue
Yonkers, New York 10701**

Dear Mr. Ryder

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(e)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty
Hearing Examiner**

cc: ~~Petitioner's Representative~~
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES E. RYDER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Years :
1968 and 1969. :

Petitioner, James E. Ryder, residing at 1085 Warburton Avenue, Yonkers, New York 10701, has filed a petition for re-determination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1968 and 1969 (File No. 13770).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on November 19, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUES

I. Whether partnership income distributed to a nonresident partner during 1968 and 1969, can be allocated for services performed within and without New York State.

II. Whether expenses charged to the petitioner's capital account during 1969 are deductible from his partnership income.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, James E. Ryder, was a resident of the State of New Jersey during 1968 and 1969. He filed New York State nonresident income tax returns for these years, attributing 74.54% (or \$33,543.00) of a total 1968 partnership income of \$45,000.00 to New York sources and \$33,010.00 of a total 1969 partnership income of \$38,815.00 to the same, which amount was based on billable hours within and without New York.

2. On December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency for the years 1968 and 1969 for the sum of \$4,457.63 holding petitioner's partnership income fully taxable to New York State.

3. Although petitioner conceded that the allocation method used for the year 1968 was not proper, he asserted that the proper method should be based on billable hours within and without New York State, such as the method used for the year 1969.

4. The petitioner, James E. Ryder, is an attorney admitted to practice in New York State. During the years in question, he was a partner in the law firm of Davis, Hoxie, Faithful & Hapgood, 30 Broad Street, New York, New York. He is not admitted in New Jersey or any other state. He is registered to practice before the United States Patent Office and his practice is confined to patent and related matters. His income during the years in question, came from his distributive share of the income of that partnership. He appears frequently before Federal courts in many states on matters related to patents.

5. Davis, Hoxie, Faithful and Hapgood's practice was largely confined to patent, trademark and related matters. During the years in question, it maintained a relationship with a corresponding Washington, D. C. law firm from whose office all of its papers on patent matters were processed. The income of the partnership was distributed to the individual partners by allocating fees, 20% to the originating partner, the remainder to all partners based on comparative billable hours with each partner bearing a pro rata share of overhead.

6. Davis, Hoxie, Faithful & Hapgood filed partnership returns for the years in question. However, for the years 1966 and 1967, the firm claimed the Washington law firm as its Washington office and allocated its income on the basis of a factor method based in part on its billings and in part on the amounts paid out to its partners, employees and the Washington law firm. This allocation, however, was disallowed by the Income Tax Bureau and the firm did not contest the matter.

7. No evidence was introduced to show that either Mr. Ryder or the partnership carried on business from any fixed location in another jurisdiction or that the income therefrom is considered to have its source in another jurisdiction.

8. During December, 1969, petitioner participated in the formation of a new partnership, the firm of Ryder and Hefter.

As a partner of this firm, petitioner was charged with expenses incident to the formation of the partnership. These expenses, in the amount of \$9,184.53, were claimed in determining adjusted gross income on his Federal personal income tax return for the year 1969. However, they were not claimed on his New York State income tax nonresident return for the year 1969. In addition, no income from this firm was shown on either the Federal or the New York State returns for the year 1969, since the firm of Ryder and Hefter did not start doing business until the year 1970.

9. That the petitioners distributive share of the partnership income during the years 1968 and 1969 is fully taxable as income derived from New York sources in accordance with the meaning and intent of section 637(a)(1) and 20 NYCRR 134.1.

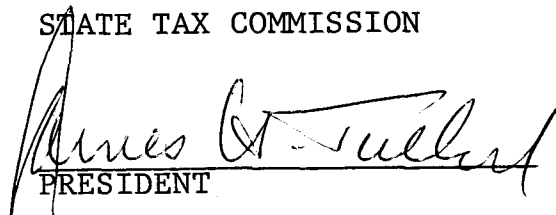
10. That the expenses of \$9,184.53, are part of the petitioner's interest in the new partnership and are not deductible as expenses attributable to a trade or business carried on by him in accordance with the meaning and intent of section 62(a) of the Internal Revenue Code and Article 22 of the Tax Law.

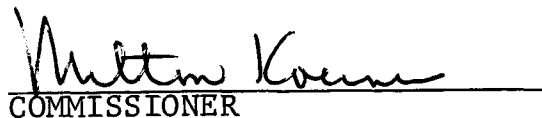
11. That the petition of James E. Ryder is denied and the Notice of Deficiency issued December 22, 1975 in the amount of \$4,457.63 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

SMALL CLAIMS

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

TO
BY
DATE

REASON CHECKED
Unknown Refused

Insufficient address

Invalid, List no address

NO STATEMENT OFFICE BY CHECK

NO STATEMENT BY 2000 CHECKERS

[Handwritten signature]

James E. Ryder

1085 Warburton Avenue

Yonkers, New York 10701

~~Return~~
~~1st Notice~~ 13
~~2nd Notice~~
~~Return~~

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1968 and 1969.

State of New York
County of Albany

John Huhn, 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 29th day of September, 1977, she served the within
Notice of Decision by ~~(certified)~~ mail upon James E. Ryder
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. James E. Ryder
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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

29th day of September, 1977

