

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD SIMON

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

Bruce Batchelor, 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 26 day of April, 1977, he served the within
Notice of Decision by (certified) mail upon Leonard Simon

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Leonard Simon
8 Mayfair Drive
Wayne, New Jersey

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~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

26 day of April, 1977.

Bruce Batchelor

Janet Mack



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

April 26, 1977

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

Mr. Leonard Simon
8 Mayfair Drive
Wayne, New Jersey

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

Please take further notice that pursuant to
Section(~~2~~) **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,

FRANK J. PUCCIA

Supervisor of
Small Claims Hearings

Enc.

cc: ~~Retitioner's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEONARD SIMON :
for Redetermination of a Deficiency or : DECISION
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1969. :

Petitioner, Leonard Simon, residing at 8 Mayfair Drive, Wayne, New Jersey, has filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1969 File No. 9-33222858).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on October 25, 1976 at 2:45 P.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., (Frank Levitt, Esq. of counsel).

ISSUE

Whether the petitioner, Leonard Simon, a nonresident partner, can allocate his income received from the New York State partnership "Schwinger, Simon and Company."

FINDINGS OF FACT

1. The partnership of Schwinger, Simon and Company is engaged in the practice of accounting. During the year 1969, the firm consisted of three partners of which two were nonresidents. The petitioner, Leonard Simon, was a nonresident partner of said firm.

2. Petitioner, Leonard Simon, filed a New York State nonresident income tax return for the year 1969. On said return, he allocated his distributive share of income received from said partnership.

3. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Leonard Simon, disallowing the allocation claimed on the grounds that the partnership return did not allocate income and therefore petitioner may not allocate his share of ordinary income. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$919.53.

4. The original 1969 New York State partnership return of Schwinger, Simon and Company dated April 14, 1970 listed only one partnership office located at 277 Broadway, New York City and no allocation of income was claimed on such return. Petitioner, Leonard Simon, asserted that the original partnership return did not properly reflect his share of partnership income for 1969 based upon the partnership books as the partnership had another bona fide office located outside New York State. Petitioner submitted an amended 1969 New York State partnership return for Schwinger, Simon and Company dated October 25, 1976

on which an allocation of income was claimed on the basis of such other office maintained at 15 Sinclair Drive, Wayne, New Jersey. This Wayne, New Jersey, address was the home address of Aaron Schwinger. None of the member partners were certified in the State of New Jersey.

CONCLUSIONS OF LAW

A. That the partnership of Schwinger, Simon and Company was not entitled to an allocation of income both within and without New York State during 1969 because it never maintained a regular place of business outside New York State during said year. Therefore, the petitioner, Leonard Simon, was not entitled to an allocation of his distributive share of partnership income received from Schwinger, Simon and Company for the year 1969. The home address in New Jersey of one of the members did not constitute a regular place of business of the partnership.

B. That the petition of Leonard Simon is denied and the Notice of Deficiency dated March 26, 1973 is sustained.

DATED: Albany, New York
April 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER