

In the Matter of the Petition

of

STANLEY R. TUPPER

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) ~~xxx~~ Period(s)
1970 and 1971

State of New York
County of Albany

Bruce Batchelor, 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 25th day of January, 19 77, she served the within
Notice of Decision by (certified) mail upon Stanley R. Tupper

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Stanley R. Tupper
Boothbay Harbor, Maine 04538

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

25th day of January, 19 77

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY R. TUPPER

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)~~ :
1970 and 1971

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 25th day of January , 19 77, ~~he~~ served the within
Notice of Decision by (certified) mail upon Simon Present, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Simon Present, Esq.
55 Liberty St.
New York, N.Y. 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

25 th day of January , 19 77

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

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

January 25, 1977

Stanley R. Tupper
Boothbay Harbor, Maine 04538

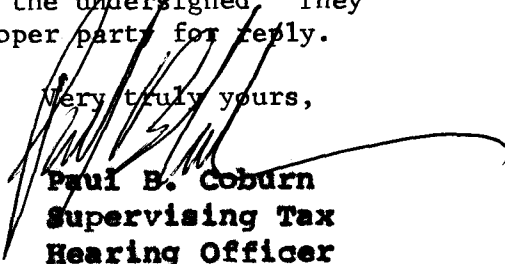
Dear Mr. Tupper:

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

Please take further notice that pursuant to
Section ~~602~~ **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 :
STANLEY R. TUPPER :
for Redetermination of a Deficiency : DECISION
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Years 1970 and 1971. :

Petitioner, Stanley R. Tupper, residing at Boothbay Harbor, Maine 04538, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1970 and 1971. (File No. 0014225).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1976, at 1:15 P.M. Petitioner appeared by Simon Present, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arnold Dorman, Esq., of counsel).

ISSUE

Whether petitioner was a nonresident partner in a New York law firm and thus subject to New York State income tax upon the distributive share of income received from the partnership.

FINDINGS OF FACT

1. On May 20, 1974, as the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Stanley R. Tupper, imposing personal income taxes for the years 1970 and 1971 on the grounds that he was a partner in the New York law firm of Royall, Koegel and Wells. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$7,255.08, plus penalty and interest of \$3,753.49 for a total of \$11,008.57.

2. On October 1, 1969, petitioner, Stanley R. Tupper, contracted with the law firm of Royall, Koegel and Wells, of New York, New York, for a partnership agreement for one year to September 30, 1970. He was to be one of their "non-proprietary" partners whose percentage for the period was 3.75%. He was guaranteed \$30,000.00 annually and contingent on actual cash distributions exceeding \$800,000.00, he would receive an additional 3.75% of such distributions in excess of \$800,000.00. His fees belonged to the firm. He was not liable for debts or losses of the firm. Any profits undistributed in the year were the exclusive property of the firm whose partners were known as "proprietary partners". These proprietary partners exclusively owned, acquired and provided the offices, library, furnishings and equipment as well as the business. Petitioner's name did not appear on the letterhead of the firm nor did he attend, or was he invited to attend partnership meetings.

3. Petitioner, Stanley R. Tupper, a former Congressman from Maine and a lawyer, was primarily a consultant and lobbyist for the firm of Royall, Koegel and Wells, representing various clients in Washington, D.C., where his office was located. He was so registered with the proper authorities.

4. During the period in issue, petitioner, Stanley R. Tupper, did not have any social security or taxes withheld from his income from the partnership firm. His Federal tax returns for the years 1970 and 1971 identified him as a partner and reflected his expenses incurred and deducted thereon. He computed social security self-employment tax from the partnership. The deductions for the years were as follows:

<u>Deductions</u>	<u>1970</u>	<u>1971</u>
Medical	\$ 702.77	--
Taxes	320.00	\$1,050.62
Contributions	107.00	65.00
Interest	4.92	2,068.88
Alimony	10,333.28	8,019.22
Miscellaneous	80.00	89.00

5. Petitioner, Stanley R. Tupper, cooperated with the Income Tax Bureau and acted in good faith.

CONCLUSIONS OF LAW

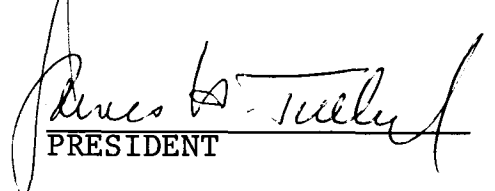
A. That petitioner, Stanley R. Tupper, as a nonresident partner in a New York law firm during 1970 and 1971, was subject to New York State income tax upon the distributive share of the income received from Royall, Koegel and Wells, according to the meaning and intent of section 637(a) and 637(b) of the Tax Law.

B. That petitioner Stanley R. Tupper, is permitted to elect to deduct his New York itemized deductions under section 635 in determining his New York taxable income, and there shall be attributed to him his distributive share of partnership items of deduction from Federal adjusted gross income which are deductible by him under subsection (c) or (d) of section 635, whichever is applicable according to the meaning and intent of section 637(a)(2) of the Tax Law.

C. That the petition of Stanley R. Tupper is granted to the extent that the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1970 and 1971 is waived; that the income tax for the years 1970 and 1971 be modified to the extent as permitted by his election stated supra together with such interest as is legally due; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 20, 1974; and, that except as so granted the petition is in all other respects denied.

DATED: Albany, New York
January 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER