

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORTON E. YOHALEM and
FLORENCE M. YOHALEM

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)~~ :
1961, 1962 and 1963

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Morton E. Yohalem & Florence M.
Yohalem ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Morton E. Yohalem
3539 Porter Street N.W.
Washington 16, D.C.
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

16th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MORTON E. YOHALEM and
FLORENCE M. YOHALEM
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article 22 of the
Tax Law for the Year(s) ~~or Period(s)~~
1961, 1962 and 1963

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Arthur L. Kimmelfield, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Arthur L. Kimmelfield, Esq.
430 Park Avenue
New York, New York 10022
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

16th day of August

, 1977.

Marsina Donnini

Janet Mack



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

August 16, 1977

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

Mr. & Mrs. Morton E. Yohalem
3539 Porter Street N.W.
Washington 16, D.C.

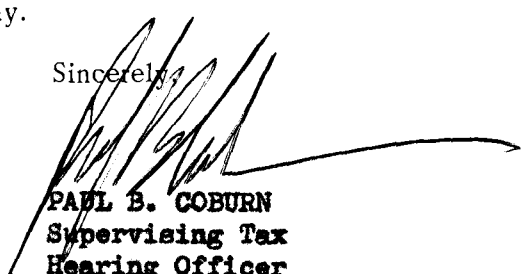
Dear Mr. & Mrs. Yohalem:

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(s) **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,


PAUL B. COBURN
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MORTON E. YOHALEM and	:	
FLORENCE M. YOHALEM	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1961, 1962 and 1963.	:	

Petitioners, Morton E. Yohalem and Florence M. Yohalem, 3539 Porter Street N.W., Washington 16, D.C., filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1961, 1962 and 1963. (File No. 01764).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 13, 1973 at 9:00 A.M. and continued on September 26, 1975 at 9:30 A.M. and August 3, 1976 at 9:15 A.M. Petitioners appeared by Arthur L. Kimmelfield, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. and Saul Heckelman, Esq. (Alexander Weiss and James Scott, Esqs., of counsel).

ISSUE

I. Whether income of petitioner, Morton E. Yohalem, as a non-resident partner of a New York State partnership was a partner's distributive share of profits and, therefore, subject to New York

income tax within the meaning and intent of section 637(a)(1) of the Tax Law in the years 1961, 1962 and 1963.

II. Whether the entire income of petitioner, Morton E. Yohalem, in 1961, from a New York State partnership called Marshall, Bratter, Greene, Allison and Tucker is a distributive share of profits of said partnership, or whether a portion is attributable to prior years when said petitioner was an outside contractor with the partnership.

III. Whether and to what extent petitioner, Morton E. Yohalem, may deduct unreimbursed expenses incurred in the production of New York State income in his Washington, D.C. office.

FINDINGS OF FACT

1. Petitioners, Morton E. Yohalem and Florence M. Yohalem, filed a New York State nonresident income tax return for the year 1961. They listed total receipts from Morton E. Yohalem's law practice as \$95,233.46. On petitioners' Schedule "C" of their Federal return, the aforementioned income was apportioned by attributing \$26,883.46 of it to Morton E. Yohalem's individual practice, and \$68,350.00 of it as income from the partnership of Marshall, Bratter, Greene, Allison and Tucker in New York State.

2. Petitioners, Morton E. Yohalem and Florence M. Yohalem, filed an amended New York State nonresident income tax return for the year 1962. They listed total receipts from Morton E. Yohalem's

law practice as \$68,551.20. On petitioners' Schedule "C" of their Federal return, the aforementioned income was apportioned by attributing \$55,051.20 of it to Morton E. Yohalem's individual practice, and \$13,500.00 of it as income from the partnership of Marshall, Bratter, Greene, Allison and Tucker in New York State.

3. Petitioners, Morton E. Yohalem and Florence M. Yohalem, filed a New York State nonresident income tax return for the year 1963. They listed \$41,999.29 as total receipts from Morton E. Yohalem's law practice. On petitioner's Schedule "C" of their Federal return, the aforementioned income was apportioned by attributing \$22,874.29 of it to Morton E. Yohalem's individual practice, and \$19,125.00 of it as income from the partnership of Marshall, Bratter, Greene, Allison and Tucker in New York State.

4. On March 15, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Morton E. Yohalem and Florence M. Yohalem, imposing additional income tax for the year 1961 of \$4,822.86, plus \$844.00 in interest, upon the grounds that, "New York State partnership returns for Marshall, Bratter, Greene, Allison and Tucker do not contain completed nonresident partner allocation schedules. Total amount of partnership income reported on your 1961 New York State nonresident return is therefore held to constitute income from New York sources." Accordingly, a Notice of Deficiency was issued totalling \$5,666.86.

5. On October 5, 1964, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Morton E. Yohalem and Florence M. Yohalem, imposing additional income tax for the year 1962 of \$3,667.34, plus \$323.75 in interest, upon the grounds that allocation of business income was disallowed for lack of substantiation. Accordingly, a Notice of Deficiency was issued totalling \$3,991.09.

6. On January 30, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Morton E. Yohalem and Florence M. Yohalem, imposing additional income tax for the year 1963 of \$949.56, plus \$159.01 in interest, upon the grounds that the distributive share of partnership income from Marshall, Bratter, Greene, Allison and Tucker was not considered to be subject to allocation. Accordingly, a Notice of Deficiency was issued totalling \$1,108.57.

7. Petitioner, Morton E. Yohalem, was a resident of Washington, D.C. during the entire period in issue. He was a lawyer and carried on a private law practice in Washington, D.C. during the entire period in issue.

8. In April of 1957 petitioner, Morton E. Yohalem, was introduced by Marshall, Bratter, Greene, Allison and Tucker (herein Marshall - Bratter) to Dutch corporate clients of Marshall-Bratter, in order to represent these clients before the Securities and Exchange Commission in Washington, D.C. on a very substantial matter under the Public Utility Holding Company Act. Mr. Yohalem billed the

clients directly. The matter was concluded in late 1959. Mr. Yohalem made interim billings to the clients during the course of the proceedings on the aforementioned subject matter which totalled approximately \$50,000.00. In 1960, Mr. Yohalem and the clients' representative agreed on a total fee of \$135,000.00 thereby leaving approximately \$85,000.00 to be billed, in addition to the aforementioned interim bills previously rendered and paid. In April of 1959 Mr. Yohalem became a partner of Marshall - Bratter. Mr. Yohalem continued his private practice in Washington, D.C. and continued to bill and collect from his own nonpartnership clients directly.

9. In 1960, Mr. Yohalem was paid directly by the aforementioned Dutch corporate clients the remaining approximate \$85,000.00 as follows: Consolidated Electronics Industries Corp., \$20,639.25; Phillips Electronics and Pharmaceutical Ind. Corp., \$10,319.60; and Mendes Gans and Co. (acting for Melasine Corp.), \$55,670.35. Excluding disbursements, the legal fees involved in these payments were \$20,000.00, \$10,000.00 and \$55,500.00, respectively.

10. The three payments mentioned in Finding of Fact "9" were each made by check to petitioner, Morton E. Yohalem, and each of these three checks were deposited by him with Marshall - Bratter. The last check was deposited on April 11, 1960. Sometime later,

Marshall - Bratter distributed \$45,500.00 of the \$55,500.00 payment to petitioner, Morton E. Yohalem. This \$45,500.00 was part of the \$68,350.00 reported by petitioners' as income from Marshall - Bratter in 1961.

11. Until April 1, 1963 it was understood that petitioner, Morton E. Yohalem's minimum draw as a partner would be \$10,000.00. By letter of April 1, 1963, petitioner, Morton E. Yohalem, agreed that:

"Promptly after the close of the fiscal year, we will review the services in which I participated, billed and paid during the past year, and after giving due weight to all relevant considerations such as organization, overhead, time spent etc., my share of the profits for that year shall be determined by agreement with the Executive Committee, it being understood that I should not be entitled to any minimum guaranty." (emphasis supplied)

12. Petitioner, Morton E. Yohalem, did not, at any time, share in the expenses of the New York office of Marshall - Bratter. Conversely, Marshall - Bratter did not, at any time, share in the expenses of petitioner, Morton E. Yohalem, in his Washington, D.C. office. Further, the bulk of the work done for Marshall - Bratter by Mr. Yohalem was done in Mr. Yohalem's Washington, D.C. office, and the basic factor of his income from the partnership was an hourly rate of pay for work done for the partnership's clients.

CONCLUSIONS OF LAW

A. That the entire income of petitioner, Morton E. Yohalem, received from Marshall, Bratter, Greene, Allison and Tucker in the years 1961, 1962 and 1963 was a distributive share of

partnership profits and subject to New York State income tax within the meaning and intent of section 637(a)(1) of the Tax Law for said years.

B. That since a nonresident partner of a New York State partnership may allocate his distributive share only in the same proportion as the partnership allocates its income to sources outside New York State; and that since Marshall, Bratter, Greene, Allison and Tucker did not allocate any profits to sources outside New York State in the years 1961, 1962 and 1963, therefore, the entire distributive share of profits to Morton E. Yohalem in said years is allocable to New York State.

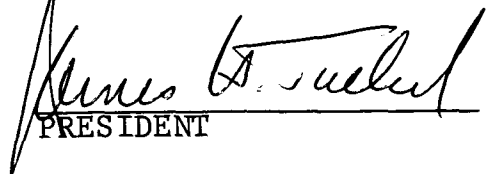
C. That since the entire \$68,350.00 reported on petitioners, Morton E. Yohalem and Florence M. Yohalem's New York State non-resident income tax return, as income from the New York State partnership was distributed after the commencement of Morton E. Yohalem's partnership relationship with said partnership, therefore the entire amount is a distributive share of partnership profits.

D. That since the partnership Marshall, Bratter, Greene, Allison and Tucker did not deduct the expenses of the Washington, D.C. office which produced the income attributable as a distributive share to petitioner, Morton E. Yohalem, therefore, his expenses in his Washington, D.C. office are deductible in proportion to his income attributable to New York State sources, as follows: In 1961, \$68,350.00 of \$95,233.46 = 71.77%; in 1962, \$13,500.00 of \$68,551.20 = 19.70%; in 1963, \$19,125.00 of \$41,999.29 = 45.53%.


E. That the petitions of Morton E. Yohalem and Florence M. Yohalem are granted to the extent indicated by Conclusion of Law "D", supra; that the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued March 15, 1965, October 5, 1964 and January 30, 1967; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER