

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDMUND E. HARVEY

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)~~
1969 and 1970.

AFFIDAVIT OF MAILING

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 6th day of October, 1978, she served the within
Notice of Decision by (certified) mail upon Edmund E. Harvey

~~XXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,

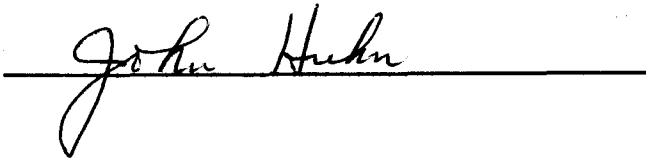
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edmund E. Harvey
3516 Prosperity Avenue
Fairfax, Virginia 22030

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

Sworn to before me this
6th day of October, 1978





STATE OF NEW YORK
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Taxes under Article(s) 22 of the :
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State of New York
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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 6th day of October , 1978, she served the within
Notice of Decision by (certified) mail upon John Wilcox, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: John Wilcox, Esq.
Chadbourn, Parke, Whiteside & Wolff
30 Rockefeller Plaza,
New York, New York 10020

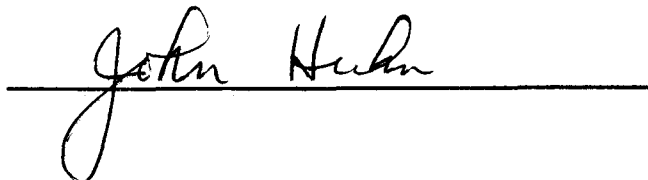
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of October , 1978.







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

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

October 6, 1978

Edmund E. Harvey
3516 Prosperity Avenue
Fairfax, Virginia 22030

Dear Mr. Harvey:

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 ~~690~~ **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,

Michael Alexander
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

EDMUND E. HARVEY

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the years 1969 and 1970.

Petitioner, Edmund E. Harvey, 3516 Prosperity Avenue, Fairfax, Virginia 22030, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970 (File No. 12107).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 8, 1977 at 9:15 A.M. Petitioner appeared by John Wilcox, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether any portion of the income received by petitioner from his activities as a partner in a law firm during the years 1969 and 1970 is subject to New York State personal income tax.

II. If so, whether itemized deductions may be considered in computing any tax liability which might result, and whether petitioner

acted with reasonable cause in failing to file New York State income tax nonresident returns for 1969 and 1970.

FINDINGS OF FACT

1. Petitioner, Edmund E. Harvey, failed to file New York State tax returns for the years 1969 and 1970. During said years, petitioner was a resident of and paid income tax to the Commonwealth of Virginia.

2. During the years at issue, petitioner was an attorney admitted to practice law in the State of New York. In the latter part of 1969, he was admitted to practice in the District of Columbia and specialized in practicing before administrative agencies in said District.

3. For the years 1969 and 1970, petitioner was a partner in the law firm of Chadbourne, Parke, Whiteside & Wolff. The principal office of the partnership was located in the City and State of New York. It filed New York State partnership returns for the years at issue, which showed (among other things) that petitioner received a distributive share of partnership income in accordance with the partnership agreement. Petitioner received a guaranteed payment of \$60,000.00 for 1969 and a ~~per~~centage distribution for 1970.

4. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner for the years 1969 and 1970 asserting personal income tax of \$11,878.42. It was issued on the grounds that he received a partnership distribution from Chadbourne, Parke, Whiteside and Wolff which was derived from New York sources. In addition to the tax, the Notice asserted a penalty pursuant to section 685(a) (1) and 685(a) (2) of the Tax Law, plus applicable interest.

5. Petitioner contended that he did not file New York State income tax nonresident returns because he was a nonresident of New York State and because substantially all of his services were performed outside the State at the partnership's office in the District of Columbia. He also contended that the partnership's income from that office exceeded his income from the firm in each year at issue.

6. In each year at issue, petitioner filed joint Federal income tax returns on which he claimed itemized deductions and a total of five exemptions.

CONCLUSIONS OF LAW

A. That petitioner, Edmund E. Harvey, was a nonresident partner of a New York partnership, and that his income derived from said firm was includable in his New York adjusted gross income to the same extent that the partnership allocated its income to New York State.

B. That petitioner's failure to file New York State income tax nonresident returns for 1969 and 1970 was due to reasonable cause and not due to willful neglect; therefore, penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are cancelled.

C. That the petitioner is allowed to claim itemized deductions for each year at issue (based on those claimed on his Federal returns), modified as required by section 615(c)(1) of the Tax Law and subject to the limitations provided for in section 635(c) of the Tax Law. The Income Tax Bureau is directed to modify the Notice of Deficiency issued on September 29, 1975 by recomputing petitioner's liability to allow said itemized deductions and also to allow five exemptions and a statutory credit of \$25.00 for each year at issue.

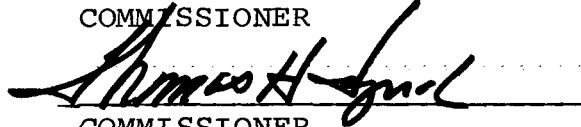
D. That the petition of Edmund E. Harvey is granted to the extent provided for in Conclusion of Law "B" and "C" and that except as so granted, is in all other respects denied. The Notice of Deficiency as modified is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York
October 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER