

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN R. AND ELIZABETH A. FAWCETT

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) ~~1970, 1971 and 1972~~
1970, 1971 and 1972.

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 16th day of March, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Joseph R. Satz

(representative of) the petitioner in the within proceeding,

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

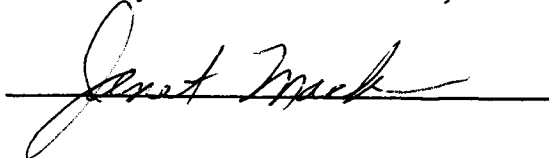
Joseph R. Satz, Esq.
Forsythe, LeViness & Pearson
375 Park Avenue
New York, New York 10022

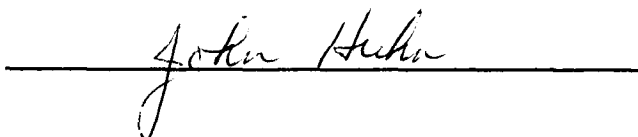
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 March, 1978





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STATE TAX COMMISSION

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JOHN R. AND ELIZABETH A. FAWCETT

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State of New York
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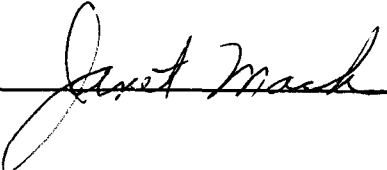
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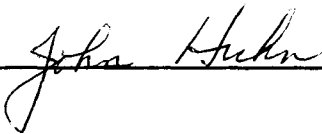
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1111 River Road
Edgewater, New Jersey

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Sworn to before me this
16th day of March, 1978.







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

March 16, 1978

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

**Mr. & Mrs. John R. Fawcett
1111 River Road
Edgewater, New Jersey**

Dear Mr. & Mrs. Fawcett:

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 **(b) 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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN R. AND ELIZABETH A. FAWCETT : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1970, 1971 and 1972. :

Petitioners, John R. and Elizabeth A. Fawcett, residing at 1111 River Road, Edgewater, New Jersey, 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 1970, 1971 and 1972 (File No. 00604).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 23, 1977 at 10:45 A.M. Petitioners appeared by Joseph R. Satz, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether the compensation petitioner John R. Fawcett received as an associate attorney of a New York law firm during the year 1970 was derived from personal services rendered within and without New York State.

II. Whether referral fees earned by petitioner John R. Fawcett during the year 1970 were includible in petitioners' New York adjusted gross income.

III. Whether partnership income distributed to a nonresident partner during the years 1971 and 1972 could be allocated for services performed within and without New York State.

FINDINGS OF FACT

1. Petitioners, John R. and Elizabeth A. Fawcett, filed New York State nonresident income tax returns with attached New York State business allocation schedules (Form IT-202-A) for the years 1970, 1971 and 1972. On said schedules, they allocated petitioner John R. Fawcett's income to New York State for the years 1970, 1971 and 1972, based on allocation percentages of 50%, 69% and 80%, respectively. The petitioners indicated on the business allocation schedules that John R. Fawcett practiced at 345 Park Avenue, New York, New York, and at 58 Glen Hill Road, Wilton, Connecticut.

2. On February 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against the petitioners for the years 1970, 1971 and 1972. It was issued on the grounds that their allocation of income for services performed by petitioner John R. Fawcett at his home in Wilton, Connecticut, had been disallowed because the Income Tax Bureau did not consider an office at home to be a bona fide business office for the purposes of allocating income to sources

within and without New York State. In addition, the Bureau asserted penalties for underpayment of estimated taxes for the years 1971 and 1972 in accordance with section 685(c) of the Tax Law.

3. Petitioners were residents of the State of Connecticut during the years 1970, 1971 and 1972, residing at 58 Glen Hill Road, Wilton, Connecticut.

4. Petitioner John R. Fawcett was an attorney admitted to practice law in New York State during the years 1970, 1971 and 1972. He was not admitted to practice law in Connecticut or any other state during the years 1970, 1971 and 1972. During the years in question the petitioner was with the law firm of Forsythe, McGovern, Pearson and Nash, located at 345 Park Avenue, New York, New York.

5. During the year 1970, petitioner John R. Fawcett was an associate attorney with Forsythe, McGovern, Pearson and Nash, and was paid on a salary basis. The petitioner contended that he performed services both within and without New York State during said year. He did not submit any documentary evidence to indicate the number of days worked within and without New York State during 1970.

6. Petitioner John R. Fawcett also received "referral fees" from Forsythe, McGovern, Pearson and Nash during the year 1970, as well as one-third of the total fees billed and collected. He contended that he did not perform any services for the referral fees and that he would receive these fees, regardless of which member

of the law firm serviced the client. He stated that during the year 1970, the majority of the referral fees he received were obtained for referring Fawcett Publications (located in Connecticut) to the New York City law firm.

7. During the years 1971 and 1972, petitioner John R. Fawcett was a partner in the law firm of Forsythe, McGovern, Pearson and Nash. He received a 10% distributive share of the profits and losses of said firm in 1971 and 1972. Petitioner stated that the law firm became a "Professional Corporation" in 1971 and that he performed services both within and without New York State for said firm during 1971 and 1972. However, he failed to submit any documentary evidence to support these contentions.

8. No evidence was submitted to indicate that the law firm of Forsythe, McGovern, Pearson and Nash, maintained a bona fide office located outside New York State, or that it was otherwise entitled to allocate its income to sources within and without New York State during the years in issue.

9. Petitioner John R. Fawcett submitted a schedule of income received by the law firm from various clients who were located outside New York State during the years 1970, 1971 and 1972. He contended that 10% of the income shown on this schedule constituted his share of non-New York income, since said income was received by the firm from clients located outside New York State.

CONCLUSIONS OF LAW

A. That petitioner John R. Fawcett did not sustain the burden of proof required to show a) the number of days he worked within and without New York State during 1970 on behalf of his New York employer, b) that his employer required him to work both within and without New York State during said year, or c) that his salary for 1970 depended directly on the volume of business conducted by him. Therefore, he is not entitled to allocate said income.

B. That the referral fees received by petitioner John R. Fawcett during the year 1970 from the law firm of Forsythe, McGovern, Pearson and Nash were for services performed in the State of New York and, therefore, were derived from sources located within the State of New York. Accordingly, said income is includible in petitioners' New York adjusted gross income, in accordance with the meaning and intent of section 632 of the Tax Law.

C. That the distributive share of income received by petitioner John R. Fawcett from the partnership of Forsythe, McGovern, Pearson and Nash during the years 1971 and 1972 is includible in petitioners' New York adjusted gross income, in accordance with the meaning and intent of section 637(a) of the Tax Law and 20 NYCRR 134.1.


D. That the petition of John R. and Elizabeth A. Fawcett is denied and the Notice of Deficiency issued on February 25, 1974 in the sum of \$3,066.67 is sustained.

DATED: Albany, New York
March 16, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE

TAX APPEALS BUREAU

TO . . . SECRETARY TO STATE TAX COMMISSION,

Decision remailed regular mail April 17, 1978.

4/17/78

Joseph Chyrywaty

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

SEARCHED
SERIALIZED
INDEXED
FILED
MAR 24 1976
FBI - ALBANY

~~Mr. & Mrs. John R. Fawcett
1111 River Road
Edgewater, New Jersey~~

3-18

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3-31

Handwritten initials and date: *LC 18/14*

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17th day of April, 1978

Walker

John Huhn