

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED R. MC CAULEY

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) ~~XXXXXXXXXX~~ :  
1963 through 1970.

State of New York  
County of Albany

John Huhn, 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 22nd day of March, 1978, he served the within  
Notice of Decision by (certified) mail upon Alfred R. McCauley

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed


as follows: Mr. Alfred R. McCauley  
1516 Grace Church Road  
Silver Springs, Maryland 20910

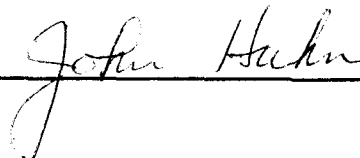
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~  
~~XXXXXX~~) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

22nd day of March, 1978

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED R. MC CAULEY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(8)~~ 22 of the :  
Tax Law for the Year(s) ~~xxx Period(x)~~ :  
1963 through 1970.

State of New York  
County of Albany

John Huhn, 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 22nd day of March, 1978, he served the within  
Notice of Decision by (certified) mail upon Allen Greenberg

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Allen Greenberg, Esq.  
Graubard Moskovitz McGoldrick Dannett & Horowitz  
345 Park Avenue  
New York, New York 10022

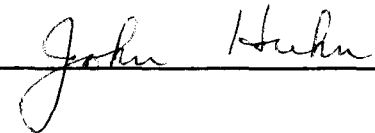
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

22nd day of March, 1978.

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

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

**March 22, 1978**

**Mr. Alfred R. McCauley**  
**1516 Grace Church Road**  
**Silver Springs, Maryland 20910**

**Dear Mr. McCauley:**

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 **(x) 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,

**Aloysius J. Nendza**  
**Assistant Director**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
ALFRED R. MC CAULEY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1963 through 1970.	:	

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Petitioner, Alfred R. McCauley, residing at 1516 Grace Church Road, Silver Springs, Maryland 20910, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1963 through 1970 (File No. 13297 and 13298).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 19, 1977 at 1:15 P.M. The petitioner appeared by Graubard, Moskovitz, McGoldrick, Dannett & Horowitz, Esqs. (Allen Greenberg, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether the petitioner, Alfred R. McCauley, was a non-resident partner of the New York law partnership of Graubard & Moskovitz and its successor partnership during the years in issue.

II. Whether the petitioner operated a Washington, D.C., office during the years in issue on behalf of the New York law partnership of Graubard & Moskovitz and its successor partnership.

III. Whether this income received by the petitioner, a non-resident during the years in issue, constituted a distributive share of gain or profit from a New York partnership attributable to New York sources.

IV. Whether the petitioner is entitled to credit for exemptions and itemized deductions as set forth in his Federal returns for the years in issue.

#### FINDINGS OF FACT

1. During the years 1963 through 1970 and prior thereto, the petitioner, Alfred R. McCauley, was and still is a nonresident residing in Silver Springs, Maryland.

2. The petitioner was admitted to the District of Columbia Bar in 1958. He is also a member of the Virginia Bar. He is not and never was a member of the New York Bar. Upon graduation from law school, he went to work for the U.S. Tariff Commission in Washington, D.C. Thereafter he went to work for a law firm in Washington, D.C. He then worked for the House of Representatives, Ways and Means Committee, until 1962.

3. In December of 1962, the petitioner entered into an oral arrangement with the New York law firm of Graubard & Moskovitz for the operation of a Washington, D.C. law office under the name of

Graubard, Moskovitz and McCauley. All of the expenses, including furniture and equipment used in connection with the Washington, D.C., office, was to be paid by Graubard and Moskovitz. Mr. McCauley was to receive a minimum of \$25,000.00 a year, plus an additional amount to be determined at the end of each year. The Washington, D.C. office specialized in international trade matters. In accordance with the oral arrangement, Mr. McCauley leased offices in Washington, D.C., in the name of Graubard, Moskovitz & McCauley. A bank account was opened in the name of Graubard, Moskovitz & McCauley with the National Bank of Washington, located in Washington, D.C. Mr. McCauley applied for an employer identification number as issued by the I.R.S., in the name of Graubard, Moskovitz & McCauley. He employed a clerical staff and filed social security and District of Columbia unemployment compensation reports in the name of Graubard, Moskovitz & McCauley. Mr. McCauley filed District of Columbia personal property tax returns in the name of Graubard, Moskovitz & McCauley.

4. During the years 1963 through 1969, Graubard and Moskovitz was a New York law partnership with offices located at 40 Wall Street, New York, New York. The partnership filed U.S. partnership returns and New York State partnership returns on a fiscal year basis ending June 30th of each year. On said returns, the petitioner was listed as a resident partner in charge of the Washington, D.C., office. The partnership returns listed the distributive share paid to the various partners including the petitioner, Alfred R. McCauley.

At the end of 1969, a merger took place between Graubard & Moskowitz and the firms of McGoldrick, Dannett & Horowitz and Everett Eisenberg. The new firm became Graubard, Moskowitz, McGoldrick, Dannett & Horowitz with offices at 345 Park Avenue, New York, New York. The announcement of the merger indicated at the bottom "Graubard, Moskowitz & McCauley, 1629 K Street, N.W. Washington, D.C. 20006."

5. No U.S. partnership return for the years in issue was filed by Graubard, Moskowitz & McCauley.

6. On occasion, clients of the New York partnership were referred to the Washington, D.C., office of Graubard, Moskowitz & McCauley.

7. The income and expenses from the Washington, D.C., office were included in the partnership returns of the New York partnership.

8. Messrs. Graubard & Moskowitz were admitted to the District of Columbia Bar in 1963 and were members thereof during the years in issue.

9. During the years in issue, Mr. McCauley received substantially more than the guaranteed \$25,000.00 per year from the New York partnership. The partnership returns of the New York partnership of Graubard & Moskowitz for the years ending June 30, 1967, June 30, 1968 and June 30, 1969 show distributive partnership shares paid to petitioner, Alfred R. McCauley, in the amounts of \$47,500.00, \$47,500.00 and \$50,000.00, respectively.

10. The petitioner did not file any New York State personal income tax returns for the years in issue. He contends that he was a member of a Washington, D.C., partnership known as Graubard, Moskovitz & McCauley and that the income received by him during the years in issue was earned outside the State of New York.

11. On November 24, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner for the years 1963 through 1969, imposing New York personal income tax on the grounds that the partnership income of a nonresident partner derived from New York sources is subject to New York State income tax. Personal income tax was imposed in the amount of \$22,352.00, plus penalties under section 685 (a) of the Tax Law totalling \$4,256.00, penalties under section 685 (a) (1) and (2) totalling \$1,544.54, plus interest of \$7,526.53 for a grand total of \$36,664.38. Accordingly, it issued a Notice of Deficiency therefor. On April 11, 1975, the Income Tax Bureau issued a Statement of Audit Charges against the petitioner for the year 1970, imposing personal income tax on the grounds that partnership income of a nonresident partner derived from New York sources is subject to New York State income tax. Personal income tax for said year was imposed in the amount of \$6,022.50, plus a penalty under section 685 (a) (1) and (2) and interest of \$1,441.97, for a total of \$10,264.93. Accordingly, it issued a Notice of Deficiency therefor. The petitioner timely filed petitions with respect to the aforesaid deficiencies.



12. On his Federal income tax returns for the years 1963 and 1964, the petitioner was entitled to an exemption of \$3,600.00; for the years 1965 through 1969, he was entitled to an exemption of \$4,200.00 and to an exemption of \$4,375.00 for 1970. The petitioner itemized deductions for the years 1967 through 1970 as indicated on his Federal income tax returns for said years, which he substantiated by copies thereof submitted to the Hearing Officer. The Income Tax Bureau only allowed the petitioner the standard deduction for the years in issue.

13. The New York partnership and its successor partnership on its New York State partnership returns did not allocate income and expenses, attributable to sources outside the State of New York.

14. The arrangement between petitioner and Graubard & Moskovitz continued after the merger of the successor partnership.

15. Amounts in the bank account of the Washington, D.C., office, in excess of the amount necessary for the operation and expenses of said office, were (from time to time) forwarded by the petitioner to the New York partnership.

16. The petitioner and Graubard and Moskovitz never executed a written partnership agreement, nor was a written memorandum confirming said arrangement ever executed by Mr. McCauley and Messrs. Graubard and Moskovitz.

CONCLUSIONS OF LAW

A. That the operation by the petitioner of the Washington, D.C., office in the names of Graubard, Moskovitz and McCauley did not constitute a separate and independent partnership, separate and apart from the New York partnership of Graubard and Moskovitz and its successor partnership.

B. That the petitioner was and still is a nonresident partner of the New York partnership of Graubard and Moskovitz and its successor partnership, operating a branch office of said partnership in Washington, D.C.

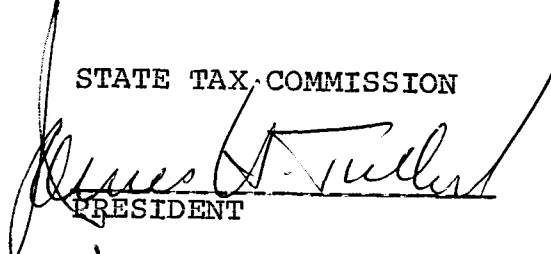
C. That the income received by the petitioner, Alfred R. McCauley, from Graubard & Moskovitz and its successor partnership during the years in issue, constituted a distributive share of income or gain from said partnership attributable to New York sources within the intent and meaning of section 637 of the Tax Law.

D. That the petitioner is entitled to the exemption and itemized deduction reported on his Federal returns for the years in issue; that the Income Tax Bureau is directed to recompute the notices of deficiency allowing petitioner credit for exemptions and deductions in accordance with Finding of Fact "12", supra.

E. That the petition of Alfred R. McCauley is granted to the extent indicated in Conclusion of Law "D", supra, and that except as so granted, is in all other respects denied.

DATED: Albany, New York  
March 22, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER