

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
THOMAS L. REGAN, JR. and
CAROL R. REGAN, his wife

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)~~
1966, 1967, 1968 and 1969.

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 13th day of September, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Thomas L., Jr. and
Carol R. Regan (~~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. Thomas L. Regan, Jr.
173 Main Street
Hingham, Massachusetts
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
13th day of September, 1978.

John Huhn

U.P. Washburn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
:
of
THOMAS L. REGAN, JR. and :
CAROL R. REGAN, his wife :
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)~~ :
1966, 1967, 1968 and 1969.

AFFIDAVIT OF MAILING

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 13th day of September , 1978, he served the within
Notice of Decision by (certified) mail upon Stephen V. Z. McQuide

(representative of) the petitioner in the within proceeding,

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

as follows: Stephen V. Z. McQuide, Esq.
Nolan & Heller, P.C.
60 State Street
Albany, New York 12207

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
13th day of September , 1978.

V. P. Walker
mD

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
THOMAS L. REGAN, JR. and
CAROL R. REGAN, his wife
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)~~
1966, 1967, 1968 and 1969.

AFFIDAVIT OF MAILING

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 13th day of September, 1978, he served the within
Notice of Decision by (certified) mail upon William F. Chandler

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
William F. Chandler, CPA
as follows: Urbach, Kahn & Werlin
66 State Street
Albany, New York 12207

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

13th day of September, 1978

V. P. W. [Signature]

John Huhn



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

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

September 13, 1978

Mr. & Mrs. Thomas L. Regan, Jr.
173 Main Street
Hingham, Massachusetts

Dear Mr. & Mrs. Regan:

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 ~~(a)~~ **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 Petitions

of

THOMAS L. REGAN, JR. and
CAROL R. REGAN, his wife

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1966, 1967, 1968 and 1969.

Petitioners, Thomas L. Regan, Jr. and Carol R. Regan, his wife, 173 Main Street, Hingham, Massachusetts, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1966, 1967, 1968 and 1969 (File No. 10740).

Formal hearings were held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 23, 1977 at 9:15 A.M. and continued on March 9, 1977 at 9:30 A.M. Petitioners appeared by Nolan & Heller, Esqs. (Stephen V. Z. McQuide, Esq., of counsel) and by William F. Chandler, CPA, of the firm of Urbach, Kahn & Werlin. The Income Tax Bureau appeared by Peter Crotty, Esq. (Marilyn M. Kaltenborn, Esq., of counsel).

ISSUES

I. Whether the notices of deficiency were timely issued against petitioner Carol R. Regan, who did not sign the non-resident returns or the consents extending the time within which to issue assessments for 1966 and 1967.

II. Whether or not petitioner Thomas L. Regan, Jr. was a partner in the New York partnership firm of Wood, Struthers, or whether he was merely an employee thereof performing no services within the State of New York.

III. Whether certain payments received by petitioner Thomas L. Regan, Jr. from Wood, Struthers & Winthrop, designated as salaries and interest, constituted a distributive share of partnership income.

IV. Whether the petitioner as a nonresident partner is bound by the allocation of the partnership.

FINDINGS OF FACT

1. Petitioners, Thomas L. Regan, Jr. and Carol R. Regan, his wife, filed joint Federal income tax returns for 1966, 1967, 1968 and 1969. Petitioner Thomas L. Regan, Jr. filed a New York State nonresident income tax return (Form IT-203) for 1967. New York State income tax nonresident returns (Form IT-203's) of petitioners for 1966, 1968 and 1969 were filed by Thomas L. Regan, Jr.

Petitioner Thomas L. Regan, Jr. executed consents extending the period within which to issue assessments for 1966 and 1967 to April 15, 1972. The consents purport to also bear the signature of petitioner Carol R. Regan.

2. On February 24, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1966, imposing additional personal income tax in the amount of \$16,744.04, with interest of \$5,010.99, for a total of \$21,755.03. Accordingly, a Notice of Deficiency was issued on April 10, 1972.

3. On February 24, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1967 and 1968, imposing additional personal income tax for said respective years in the amounts of \$22,055.16 and \$14,655.02, plus penalty (assessed under section 685(c) for underestimation of tax) of \$38.39 and interest of \$7,904.35, for a total of \$44,652.92. Accordingly, a Notice of Deficiency was issued on April 10, 1972.

4. On February 14, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1969, imposing additional personal income tax in the amount of \$3,425.72, plus interest of \$605.67, for a total of \$4,031.39. Accordingly, a Notice of Deficiency was issued on March 26, 1973.

5. Petitioners timely filed petitions for redetermination of the notices of deficiency for 1966, 1967, 1968 and 1969.

6. In 1961 or 1962, petitioner Thomas L. Regan, Jr. entered into an arrangement with Wood, Struthers & Company (later known as Wood, Struthers & Winthrop), a New York stock brokerage limited partnership, whereby Mr. Regan opened a branch office in Boston for said partnership and acted as resident manager. Mr. Regan was to receive a nominal salary plus a distributive share of the Boston income, as well as a bonus based on a formula agreed to by Mr. Regan and the partnership.

7. By agreement dated January 1, 1966, petitioner Thomas L. Regan, Jr. became a general partner in the limited partnership firm of Wood, Struthers & Winthrop.

8. By agreement dated February 1, 1968, the agreement referred to in Finding of Fact "7," supra, was modified whereby petitioner Thomas L. Regan, Jr. became a "special partner" and was not required to share in losses of the partnership. The agreement provided in part, that:

"One or more partners may, from time to time, be paid salaries and commissions on business attributable to them in such amounts as a voting majority of the partners may determine and as may be permitted by those securities exchanges of which the partnership is a member organization. Any such salary or commission shall be treated as an expense of the partnership and paid, whether or not earned, before any distribution of profits. . ."

Petitioner Thomas L. Regan, Jr. was a resident of Massachusetts during the years in issue. He was not and never has been a resident of the State of New York.

9. During the years in issue, Wood, Struthers & Winthrop was a limited partnership maintaining its principal place of business at 20 Exchange Place, New York, New York. It also maintained branch offices in Boston, Massachusetts, Rochester, New York, Dallas, Texas, Chicago, Illinois and New Haven, Connecticut. The aforementioned partnership filed New York State partnership returns for 1964 through 1968 and for the period January 1, 1969 to October 31, 1969. On December 13, 1971, the Income Tax Bureau issued a Statement of Audit Changes against the partnership, imposing additional unincorporated business tax (with interest) for 1964, 1965 and 1966 in the amount of \$34,506.16. On December 28, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the partnership for 1967, 1968 and 1969. The partnership paid the amount set forth in the statements of audit changes and did not file any protest with respect thereto.

10. The partnership returns of Wood, Struthers & Winthrop for the years referred to in Finding of Fact "9," supra, allocated income in accordance with section 707(c) of the Tax Law by using the three-factor-formula. In its audit of the aforementioned

returns of the partnership, the Income Tax Bureau allocated the income and expenses of the partnership on an office-to-office basis, pursuant to section 707(b) of the Tax Law. The partnership returns for 1966 through 1969 set forth the distributive share of net profits and salaries paid to petitioner Thomas L. Regan, Jr. as follows:

	% Time Devoted to Business	Ordinary Income	Addl. 1st Yr. Dep.	Salaries & Interest Paid to Partners
1966	100	\$199,424.63	\$203.66	\$ 20,227.35
1967	100	71,281.07	153.22	178,610.21
1968	100	21,149.54	398.58	*105,771.37
1969	100	2,722.79	99.00	35,020.81

* Includes producer's bonus of \$52,450.00.

11. Although petitioner Thomas L. Regan, Jr. contends that he was the resident manager of the Boston branch of the New York partnership of Wood, Struthers & Winthrop, and should be treated as an employee during the years in issue, he failed to present or submit sufficient evidence to corroborate or substantiate such contention.

12. Petitioner Thomas L. Regan, Jr. testified that the consents to extend the time within which to issue assessments for 1966 and 1967 were not signed by his wife, Carol R. Regan, that he had no authority to sign same on her behalf, and that he forged her

signature. He further testified that the nonresident returns for 1966, 1968 and 1969 purporting to bear the signatures of Carol R. Regan were, in fact, signed by him.

13. Petitioner Thomas L. Regan, Jr. omitted from his New York adjusted gross income for 1966 and 1967, an amount properly includible therein which was in excess of twenty-five percent of the amount of New York adjusted gross income.

14. No evidence was presented or submitted by the petitioners to support the contention that the partnership allocation for the years in issue, as audited by the Income Tax Bureau, was erroneous or incorrect.

CONCLUSIONS OF LAW

A. That the notices of deficiency asserted against petitioners for 1966 and 1967 were timely issued within six years after the filing of the returns, in accordance with the provisions of section 683(d)(1) of the Tax Law. Petitioner Thomas L. Regan, Jr. is bound by the consent executed by him. Since his wife, Carol R. Regan, was required to file a joint return or elect to file a separate return and failed to do so, the Notice of Deficiency could be issued against her at any time.

B. That during the years at issue, petitioner Thomas L. Regan, Jr. was a partner in the New York partnership firm of Wood, Struthers & Winthrop.

C. That in determining the sources of a nonresident partner's share of partnership income, no effect can be given to a provision in the partnership agreement which characterizes payments to the partner as salary or other consideration paid or distributable for services rendered to the partnership by the partner, or as being interest or other consideration paid or distributable for the use of capital of a partner (20 NYCRR 134.2(a)).

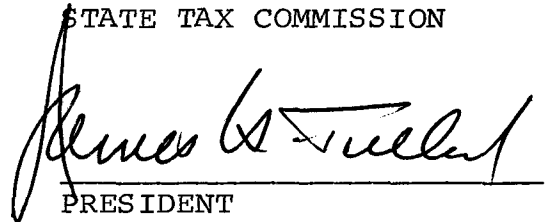
D. That the New York adjusted gross income of petitioner Thomas L. Regan, Jr. for 1966 through 1969 (in accordance with the intent and meaning of section 632(a)(1)(A) of the Tax Law) constituted his distributive share of the partnership income of Wood, Struthers & Winthrop, as determined under section 637 of the Tax Law.

E. That petitioner Thomas L. Regan, Jr. was bound by the allocation of the partnership attributable to New York sources for the years in issue.

F. That the petitions of Thomas L. Regan, Jr. and Carol R. Regan, his wife, for 1966 through 1969 be and the same are hereby denied.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

CONFERENCE

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227

AUG 16 1978

FINAL INVOICE

AUG 2 6 1978

AUG 5 1978

Handwritten: 7/31/78
2305
WV



Frank & Josephine Rich
2464 East 3rd Street
Brooklyn, New York 11223

~~2464 W. 3rd St.
Brooklyn, NY 11223~~

~~279 AVE. W.
BROOKLYN, N.Y. 11223~~

UNCLAIMED

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