

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACOB WACHTEL

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 ~~(XXXXXX Period)~~
1971

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1978, ~~she~~ she served the within
Notice of Decision by (certified) mail upon Burton Breitkopf, Esq.

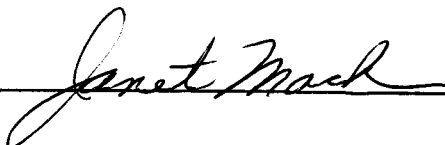
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Burton Breitkopf, Esq.
199 Jericho Turnpike
Floral Park, New York 11001

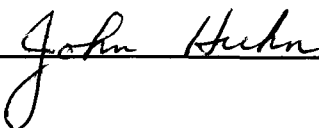
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

14th day of February, 1978





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STATE TAX COMMISSION

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JACOB WACHTEL

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For a Redetermination of a Deficiency or :
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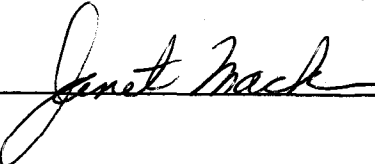
State of New York
County of Albany

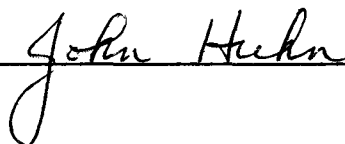
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1978, he served the within
Notice of Decision by (certified) mail upon Jacob Wachtel
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jacob Wachtel
6770 Indian Creek Drive
Miami Beach, Florida 33141
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

14th day of February, 1978







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

February 14, 1978

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

Jacob Washtel
6770 Indian Creek Drive
Miami Beach, Florida 33141

Dear Mr. Washtel:

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 ~~78~~ **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 CHYZMATY
HEARING EXAMINER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JACOB WACHTEL
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1971.

DECISION

Petitioner, Jacob Wachtel, residing at 6770 Indian Creek Drive, Miami Beach, Florida 33141, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 12458).

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 November 15, 1976 at 10:45 A.M. The petitioner appeared by Burton Breitkopf, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioner reported his distributive share of ordinary income and of New York City unincorporated business tax modification from "Anesthesiology Associates" for the year 1971, and whether the amounts attributable to these items were properly reported.

FINDINGS OF FACT

1. The petitioner, Jacob Wachtel, was a resident of New York State from January 1, 1971 through May 31, 1971. On June 1, 1971, he changed his residence from New York State and became a resident of the State of Florida. Petitioner incorrectly filed a New York State nonresident income tax return, rather than a New York State resident income tax return for the period from January 1, 1971 through May 31, 1971, the period in which he was a resident of New York State. Petitioner failed to file a New York State income tax return for the period during which he was a nonresident, from June 1, 1971 through December 31, 1971.

2. The petitioner terminated his relationship as a partner with Anesthesiology Associates on or about June 1, 1971. From June 1, 1971 through the end of 1971, the petitioner did not perform any services for Anesthesiology Associates, nor did he perform any services in New York State.

3. The petitioner contended that his distributive share of partnership income from Anesthesiology Associates for the year 1971 was reported in the amount of \$12,397.11 on Federal Schedule "C", and that this amount was also reported on his 1971 New York State nonresident return in Schedule "A", line 4, after subtracting business expenses of \$4,524.42.

4. On January 22, 1973, the Income Tax Bureau adjusted the petitioner's return to allow a refund computed as though he had filed a resident income tax return for the period during which he was a New York resident.

5. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Jacob Wachtel. This deficiency was based on a Statement of Audit Changes which held that the petitioner failed to report his distributive share of ordinary income of \$13,831.54 from the partnership of Anesthesiology Associates, as well as his share of the partnership's New York City unincorporated business tax modification of \$539.13. These amounts were considered taxable during the period the taxpayer was a nonresident since they accrued to him as of the close of the partnership's fiscal year on June 30, 1971. The aforesaid amounts were determined by an Income Tax Bureau audit of the New York State partnership return filed by Anesthesiology Associates for the fiscal year ended June 30, 1971.

6. The petitioner did not contest the increase in his distributive share of partnership income from \$12,397.11 to \$13,831.54, or the New York City unincorporated business tax modification of \$539.13 for the tax year 1971.

CONCLUSIONS OF LAW

A. That although petitioner, Jacob Wachtel, reported business income of \$7,873.29 (consisting of a partnership distribution of \$12,397.71 from Anesthesiology Associates, less expenses of \$4,524.22) on his 1971 New York State nonresident income tax return filed for his period of New York residence, this income was not properly reported.

B. That petitioner's items of income for his period of New York residence included interest income of \$318.91, less a loss from sale or exchange of property of \$1,000.00, thereby resulting in a negative New York adjusted gross income of \$681.09 for said period. The business expense of \$4,524.42 which petitioner reported on Federal Schedule "C" for the year 1971 is allowable as an itemized deduction on the 1971 return he was required to file for the period of residence, together with the itemized deduction previously allowed of \$1,338.55. Therefore, petitioner had a negative New York taxable income of \$6,814.89 for his period of New York residence and no tax was due on his separate return required for said period.

C. That the petitioner's adjusted distributive share of partnership income of \$13,831.54 and his share of the partnership's New York City unincorporated business tax modification of \$539.13 constituted amounts required to be included in his New York adjusted

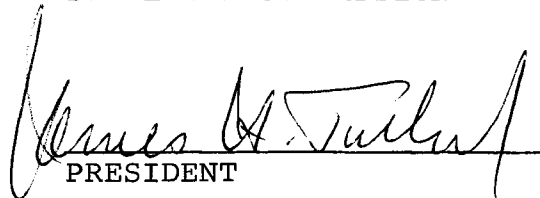
gross income on the New York State nonresident income tax return, which he was required to file for the period from June 1, 1971 through December 31, 1971 within the meaning and intent of section 654 of the New York Tax Law and 20 NYCRR 148.6. The taxable income for the petitioner's nonresident period as shown on the Statement of Audit Changes issued March 31, 1975 in the amount of \$12,117.62, properly reflected the petitioner's New York taxable income for his period of nonresidence.

D. That the Income Tax Bureau is instructed to modify the Notice of Deficiency issued March 31, 1975 in accordance with Conclusions of Law "B" and "C", supra, and that except as so modified, the Notice is otherwise sustained; that the petition of Jacob Wachtel is in all other respects denied.

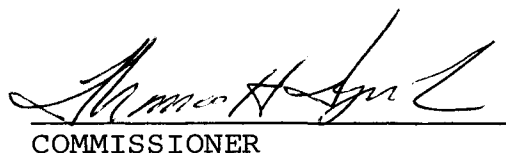
DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER