

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL P. AND LUCY CARLINO

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) ~~XXXXXX~~ :
1971 and 1972.

State of New York
County of Albany

John Huhn

, being duly sworn, deposes and says that

~~X~~he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of January , 19 79 , ~~sh~~e served the within

Notice of Decision by (certified) mail upon Paul P. & Lucy Carlino

~~XXXXXXXXXXXX~~ ~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Paul P. & Lucy Carlino
23 Chelsea Court
Hillsdale, New Jersey 07642

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.

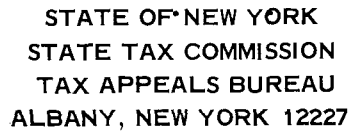
That deponent further says that the said addressee is the ~~(representative of)~~
~~XXXXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

24th day of January , 1979.

Marilyn J. Papineau

John Huhn



January 24, 1979

JOSEPH CHYRYWATY
HEARING EXAMINER

TA-1.12 (6/77)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PAUL P. AND LUCY CARLINO	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	

Petitioners, Paul P. and Lucy Carlino, 23 Chelsea Court, Hillsdale, New Jersey 07642, 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 1971 and 1972 (File No. 11945).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 19, 1977 at 1:15 P.M. Petitioner Paul P. Carlino appeared pro se and for his wife, petitioner Lucy Carlino. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioner Paul P. Carlino is entitled to allocate his distributive share of partnership income, based on services rendered within and without New York State.

II. Whether amounts paid to petitioner Paul P. Carlino by a New Jersey coproration in the form of a salary are taxable to New York, in accordance with Article 22 of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Paul P. and Lucy Carlino, filed New York State income tax nonresident returns for 1971 and 1972 and reported for 1971 and 40% of his net partnership income was reported for 1972 as being attributable to New York State sources.

2. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioners. This was done on the grounds that his net partnership income for 1971 and 1972 was fully attributable to New York sources. In addition, salary income of \$16,981.00 was determined to be income derived from the partnership and, therefore, fully taxable to New York State for 1971.

3. In 1962 petitioner Paul P. Carlino formed a partnership with Janusz Piotrowski under the firm name and style of "Piotrowski and Carlino." This partnership was an engineering and consulting firm, with a place of business at 110 West 42nd St., New York, New York.

4. During 1971 petitioner Paul P. Carlino and his partner, Janusz Piotrowski, were retained under one employment contract by Louis Berger, Inc., an engineering and contracting firm doing business in New Jersey. Louis Berger, Inc. listed and paid each

of them as employees in order to permit them to perform engineering services on a contract with the New Jersey Turnpike Authority.

5. In accordance with their partnership agreement, petitioner Paul P. Carlino and his partner Janusz Piotrowski were paid the same amount of money as a "salary", which "salary" was subject to the withholding of payroll taxes. However, they were not included in other employee-related programs.

6. The partnership of Piotrowski and Carlino continued its activities during 1971 and 1972 and maintained an office with six employees in Hartsdale, New York. The partnership did not maintain an office in New Jersey.

7. Although petitioner Paul P. Carlino submitted evidence (in the form of diaries) to establish his whereabouts within and without New York State for 1971 and 1972, the exact nature of his activities was not stated; accordingly, his services as a partner or as an employee could not be segregated, and the days pertaining to each activity could not be determined.

CONCLUSIONS OF LAW

A. That the partnership of Piotrowski and Carlino maintained an office in New York State and did not occupy, maintain or operate a place of business outside New York State, where business affairs were systematically and regularly carried on. Therefore, all of the partnership income is New York source income, pursuant to section 632(c) of the Tax Law and 20NYCRR 131.11.

B. That compensation paid to petitioner Paul P. Carlino in the form of salary under a contractual agreement constitutes partnership income, since the services rendered for Louis Berger, Inc. were so interrelated with his activities as to make them a part of said activities. Accordingly, the aforementioned compensation constitutes partnership income and must be reported as such, pursuant to section 658(c) of the Tax Law.

C. That the allocation of income based on days worked within and without New York State is an allocation method available only to nonresident employees. It cannot be applied to partnership income in accordance with the meaning and intent of section 632(c) of the Tax Law and 20NYCRR 131.16.

D. That the petition of Paul P. and Lucy Carlino is denied and the Notice of Deficiency issued September 29, 1975 in the sum of \$3,091.38 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER