

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT C. and BONNIE H. JOHNSTON

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) ~~XXXX Period(s)~~ :
1968, 1969 and 1970.

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 31st day of January , 19 79, she served the within

Notice of Decision

by (certified) mail upon Albert C. & Bonnie H.
Johnston

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

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

as follows: Albert C. & Bonnie H. Johnston
25 Outlook Drive
Darien, Connecticut 06820

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 ~~XXXXXXXXXXXXXXXXXXXX~~ ~~(representative of the)~~ petitioner.

Sworn to before me this

31st day of January , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT C. and BONNIE H. JOHNSTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(XX)~~ 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ or Period(s) :
1968, 1969 and 1970.

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 31st day of January , 19 79, She served the within

Notice of Decision by (certified) mail upon Harrington Harlow, Esq.

(representative of) the petitioner in the within proceeding,

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

as follows: Harrington Harlow, Esq.
800 Third 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

31st day of January , 19 79.

Marilyn J. Papineau

John Huhn



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

January 31, 1979

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

Albert C. & Bonnie H. Johnston
25 Outlook Drive
Darien, Connecticut 06820

Dear Mr. & Mrs. Johnston:

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(s) **890** 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 CHYRYLUATY
HEARING EXAMINER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT C. and BONNIE H. JOHNSTON

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1968, 1969 and 1970.

DECISION

Petitioners, Albert C. and Bonnie H. Johnston, 25 Outlook Drive, Darien, Connecticut 06820, 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 1968, 1969 and 1970 (File No. 01802).

On December 20, 1977, petitioners informed the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

I. Whether all of the income received by nonresident petitioner Albert C. Johnston, from his activities as a lawyer during 1968, 1969 and 1970, was allocable to New York State.

II. Whether the Income Tax Bureau properly included dividend and interest income in petitioner Albert C. Johnston's adjusted gross income subject to tax for 1970.

III. Whether the Income Tax Bureau correctly adjusted petitioner's Federal itemized deductions for New York State personal income tax purposes for 1968, 1969 and 1970.

FINDINGS OF FACT

1. Petitioners, Albert C. and Bonnie H. Johnston, filed New York State personal income tax nonresident returns for 1968, 1969 and 1970, on which petitioner Albert C. Johnston allocated the income derived from his activities as a lawyer to sources within and without New York State.

2. The Income Tax Bureau contended that petitioner Albert C. Johnston was a member of a New York partnership; therefore, all of his income was subject to New York State income tax. Its contention was based, in part, on a State Tax Commission decision dated December 8, 1971 for 1965 and 1966, which was rendered against petitioners and involved the same issue of allocation.

3. The Income Tax Bureau issued a Statement of Audit Changes, on which it recomputed petitioners' New York income, without allocation to sources without New York State. In addition for 1970, it adjusted the Federal amount used in the "B/A" formula

in computing New York itemized deductions. Accordingly, it issued a Notice of Deficiency against petitioners on July 31, 1972 for 1968, 1969 and 1970 in the amount of \$6,424.06 in personal income tax, plus \$851.95 in interest, for a total of \$7,276.01.

4. During the years at issue petitioner Albert C. Johnston, a resident of Connecticut, was an attorney specializing in Patent Law. He was licensed to practice law in New York and the District of Columbia. He was not licensed to practice law in the State of Connecticut.

5. Petitioner Albert C. Johnston was a member of a law partnership during 1968, 1968 and January and February of 1970. The partnership's only office was located in New York. All fees earned by him passed through the partnership's books and petitioner received a percentage of said fees from the partnership. Petitioner Albert C. Johnston resigned from the partnership at the end of February, 1970. Thereafter for the balance of the year, he maintained an office under his own name in New York.

6. Petitioner Albert C. Johnston contended that the fees earned from clients, both as a member of the partnership and as an individual, were based on an hourly rate for services performed and that he allocated his income to sources within and without New York State, in accordance with wherever the hours were worked

(i.e., New York, Washington, D.C., at his residence in Connecticut and elsewhere). He further contended that he maintained places of business in Arlington, Virginia, at his residence in Connecticut and that he regularly and systematically carried on his professional activities in Washington, D.C.

7. At his residence in Connecticut, petitioner Albert C. Johnston had a room which contained a desk, a telephone and a small library. He mainly utilized the room on evenings and weekends. There was no indication anywhere that it was a place of business. Zoning laws did not permit him to hold out to the public that the home was a place of business. He did not submit documentary or any satisfactory evidence to show that the services performed in his residence were performed in conjunction with business carried on in Connecticut.

8. Petitioner Albert C. Johnston did not submit documentary or any satisfactory evidence to show that he maintained a bona fide office in Arlington, Virginia, or in Washington, D.C., or that except for isolated and infrequent visits, he regularly and systematically practiced his profession at these locations.

9. In recomputing petitioners' personal income tax return for 1970, the Income Tax Bureau included only petitioner Albert C. Johnston's income from his activities as a lawyer in his adjusted

gross income, subject to tax. It did not include dividend and interest income. It corrected petitioners' error in subtracting dividend and interest income from Federal income for purposes of the "B/A" formula, used to determine the portion of the Federal itemized deduction which was attributable to New York income.

CONCLUSIONS OF LAW

A. That petitioner was a member of a law partnership during 1968, 1969 and January and February of 1970 and that said partnership had its sole office in New York State and no office elsewhere; therefore, all income received by him from the partnership was allocable to New York State, in accordance with the meaning and intent of section 632(b) of the Tax Law.

B. That during the period March 1, 1970 to December 31, 1970, petitioner maintained an office in New York State and did not have a bona fide office elsewhere and that New York was the only place (except for isolated transactions) where petitioner systematically and regularly carried on the practice of his profession; therefore, all income derived from petitioner's activities as a lawyer during said period in 1970 was allocable to New York State, in accordance with the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.4.

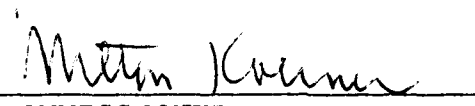
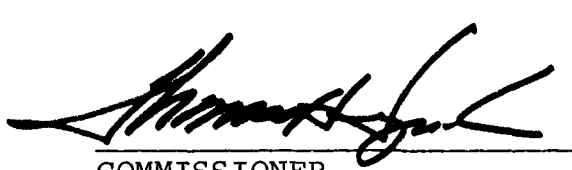
C. That the Income Tax Bureau properly excluded petitioners' dividend and interest income from adjusted gross income subject to tax for 1970, in accordance with section 632(b) of the Tax Law.

D. That the Income Tax Bureau correctly determined the portion of petitioners' Federal itemized deductions attributable to their New York income, in accordance with the meaning and intent of section 635(c) and 20 NYCRR 132.12.

E. That the petition of Albert C. and Bonnie H. Johnston is denied and the Notice of Deficiency issued July 31, 1972 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
January 31, 1979

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER