

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Walter Pozen :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Years 1969, 1970. :

State of New York

County of Albany

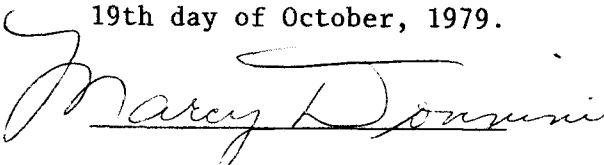
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Bernard E. Brandes the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

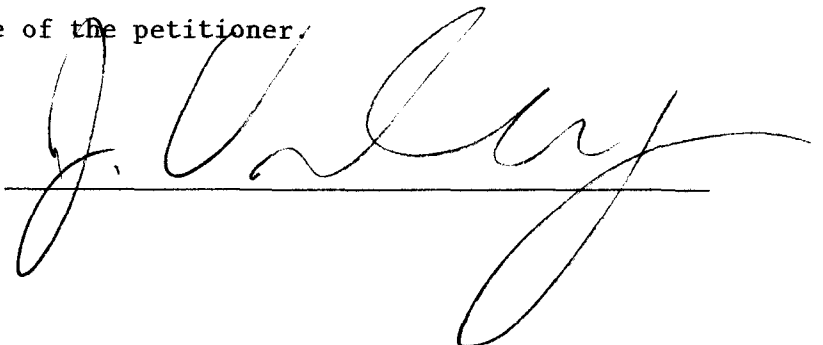
Mr. Bernard E. Brandes  
Stroock & Stroock & Lavan  
61 Broadway  
New York, NY 10006

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  
19th day of October, 1979.

  
Nancy Donzini

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Walter Pozen :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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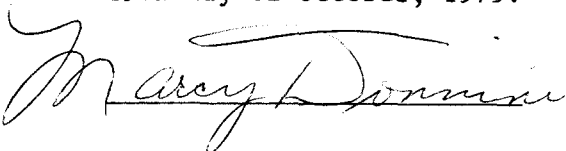
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Walter Pozen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

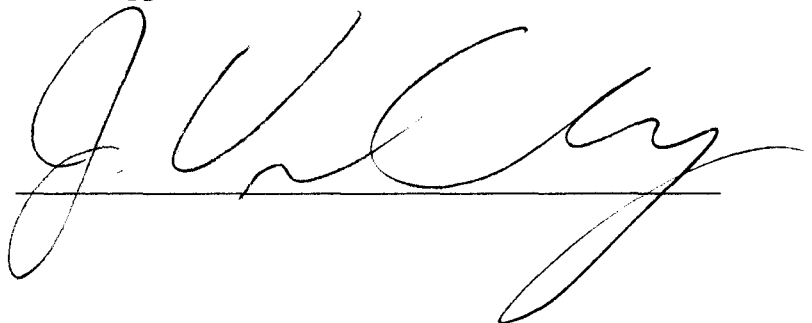
Walter Pozen  
1100 Connecticut Ave., N.W.  
Washington, D. C. 20036

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
19th day of October, 1979.

  
Mary L. Donnan

  
Jay Vredenburg

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

October 19, 1979

Walter Pozen  
1100 Connecticut Ave., N.W.  
Washington, D. C. 20036

Dear Mr. Pozen:

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) 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Bernard E. Brandes  
Stroock & Stroock & Lavan  
61 Broadway  
New York, NY 10006  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WALTER POZEN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

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Walter Pozen, c/o Stroock & Stroock & Lavan, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036, 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 1969 and 1970 (File No. 14009).

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 October 20, 1977 at 10:45 A.M. Petitioner appeared by Stroock & Stroock & Lavan, Esqs. (Mark A. Levy, Esq. and Joseph L. Forstadt, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner was a nonresident partner in a New York law firm during the years in issue.

II. Whether certain income received by petitioner during the years in issue constituted a distributive share of income from a New York partnership.

III. Whether certain income received by petitioner, a non-resident, is attributable to New York sources subject to personal income tax.

FINDINGS OF FACT

1. On January 26, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Walter Pozen, imposing personal income tax for 1969 and 1970. This was done on the grounds that he was a partner in the New York law firm of Stroock & Stroock & Lavan. Accordingly, the Income Tax Bureau issued a Notice of Deficiency to him for \$13,620.77, plus penalty of \$6,469.86 and interest of \$4,245.02, for a total of \$24,335.65.

2. Prior to 1967, petitioner was (and still is) a resident of Washington, D.C. He has never been a New York resident, or a member of the New York Bar. Since 1966 petitioner has been (and still is) a member of the Bar of Washington, D.C., and is engaged in the practice of law there.

3. On July 25, 1967, petitioner entered into an agreement with the firm of Stroock & Stroock & Lavan, effective September 1, 1967, which provided that he was to be "admitted to partnership of the firm;" that petitioner "shall have no interest or participation in any financial or other operations of the firm except those carried on by and through the Washington, D.C., office of the firm." Under the terms of the agreement, petitioner was entitled to be compensated at the rate of \$50,000.00 per year, payable in equal monthly installments. In addition, if the net income of the

Washington, D.C., office exceeded \$75,000.00, petitioner was entitled to receive 50% of such excess.

4. The agreement also provided that petitioner was not to receive any percentage interest or profit participation of any kind whatsoever in the New York operations of the firm of Stroock & Stroock & Lavan. He was not required to bear any share of the losses of the firm, whether attributable to the New York operations or to the Washington, D.C., office.

5. Pursuant to the terms of the above-mentioned agreement, petitioner had no right to participate in the management or control of the firm. He did not participate with the partners of the firm in setting policy, nor was he consulted as to the general management of the firm.

6. The petitioner originally made a capital contribution of \$5,000.00 which was subsequently returned to him. The firm paid all of the expenses for furnishing and equipping the Washington, D.C., office.

7. The partnership return of Stroock & Stroock & Lavan indicated payment to petitioner, Walter Pozen, as being salary, rather than as a distribution of income. It also indicated that petitioner was a "Washington, D.C., partner sharing Washington, D.C., office profits only."

8. On his Federal income tax returns, petitioner computed social security self-employment tax on the compensation received from Stroock & Stroock & Lavan.

CONCLUSIONS OF LAW

A. That during the years in issue, petitioner was not, in fact, a partner in the New York partnership of Stroock & Stroock & Lavan.

B. That the compensation received by petitioner during the years in issue did not constitute a distributive share of partnership income received from the New York partnership of Stroock & Stroock & Lavan, within the intent and meaning of section 637(a) of the Tax Law.

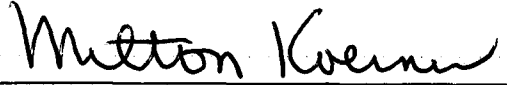
C. That the compensation received by petitioner, Walter Pozen, during the years in issue was not derived from or connected with New York sources within the intent and meaning of section 632(a)(1) of the Tax Law; therefore, said compensation was not subject to New York State personal income tax.

D. That the Notice of Deficiency is erroneous and is hereby cancelled.

DATED: Albany, New York  
OCT 19 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
TAX APPEALS BUREAU

TO.....Paul. Coburn.....  
Remailed: 11/27/79

Please file. Better address.  
WALTER POZEN

November 27, 1979

M-75 (5/76)

From Robert F. Mulligan



TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

*Formal*

NO. 541344

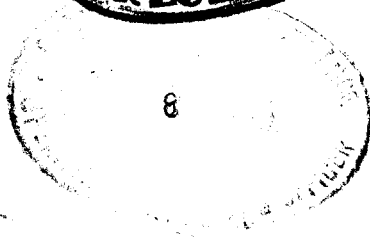
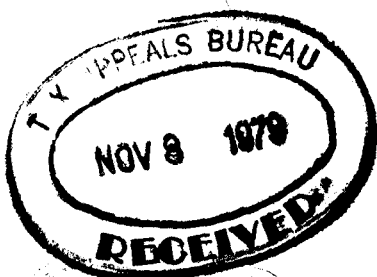
RETURNED TO  
SENDER  
WASHINGTON, D. C.  
1 NOV 1979

Walter Pozen

1100 Connecticut Ave., N.W.

Washington, D. C. 20036

*WV*



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER POZEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or

~~Provision of a Refund~~

of **Personal Income**

Taxes under Article(s) ~~xx~~ 22 of the

Tax Law for the Year(s) ~~xxxxxxx~~

~~1969 and 1970~~

State of New York  
County of **Albany**

**Jean Schultz**, 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 **27th** day of **November**, 1979, she served the within **Notice of Decision** by (certified) mail upon **Walter Pozen** (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

**Walter Pozen, 1150 17 St., NW, Washington, DC**

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

**27th** day of **November**, 1979

Joanne Knapp

Jean Schultz