

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RALPH G. and ANNA N. THOMSON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(B)~~ 22 of the
Tax Law for the Year(s) ~~XXXXXXXXXX~~
1971 and 1972

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 24th day of January , 19 79 , she served the within
Notice of Decision by (certified) mail upon Ralph G. and
Anna N. Thomson ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ralph G. and Anna N. Thomson
2130 Broadway
Room 1414
New York, NY 10023
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 ~~(representative of)~~ petitioner.

Sworn to before me this

24th day of January , 19 79

Marilyn J. Papineau

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

January 24, 1979

Ralph G. and Anna N. Thomson
2130 Broadwar, Room 1414
New York, NY 10023

Dear Mr. & Mrs. Thomson

Please take notice of the **Notice of 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 **four 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 Chyrywat
Hearing Examiner

cc: ~~Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RALPH G. AND ANNA N. THOMSON : 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, Ralph G. and Anna N. Thomson, Room 1414,
2130 Broadway, New York, New York 10023, 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. 13437).

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 September 28, 1977
at 10:45 A.M. Petitioner appeared pro se and for his wife,
petitioner Anna N. Thomson. The Income Tax Bureau appeared by
Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether all of the income received by petitioner Ralph G.
Thomson from his activities as a partner in the accounting firm
of Fisher and Baker during 1971 and 1972 was allocable to New
York State.

FINDINGS OF FACT

1. Petitioners, Ralph G. and Anna N. Thomson, were residents of the State of New Jersey during 1971 and 1972. They filed New York State combined nonresident income tax returns during said years. On said returns, they allocated petitioner Ralph G. Thomson's distributive share of income received from the partnership, based on the partnership's allocation.

2. On March 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, asserting additional personal income tax. This was done on the grounds that as a result of an audit of Fisher and Baker's partnership returns filed for the fiscal years ended August 31, 1971 and August 31, 1972 (of which petitioner, Ralph G. Thomson, is a member partner), the allocation was disallowed. Accordingly, petitioner Ralph G. Thomson's full distributive share of such partnership income for 1971 and 1972 was includable in his New York adjusted gross income. In accordance with the aforesaid Statement of Audit Changes, the Bureau issued a Notice of Deficiency in the sum of \$1,222.36.

3. Petitioner Ralph G. Thomson is a certified public accountant licensed to practice in New York State. During the years in question, petitioner Ralph G. Thomson was a partner in the accounting firm of Fisher and Baker, 88 Princeton Street, Valley Stream, New York. He is not licensed to practice in New Jersey or any other State. His income during the aforesaid years came from his distributive share of income of that partnership.

4. The partnership of Fisher and Baker consisted of two partners, of which petitioner Ralph G. Thomson was a nonresident partner. On the New York State partnership returns filed by the partnership for the years ending August 31, 1971 and August 31, 1972, the firm indicated that it maintained two offices, one located in Valley Stream, New York, and one located in Woodbridge, New Jersey.

5. The method of allocation of income used by the partnership only took into consideration the portion of the firm's income attributable to the nonresident partner, petitioner Ralph G. Thomson. It did not take into consideration the partnership's entire income. The Income Tax Bureau disallowed the allocation claimed by the partnership on the grounds that the Woodbridge office did not constitute a bona fide office of the partnership. The partnership protested the Bureau's findings; however, no evidence was submitted to indicate that any adjustment was made.

6. Petitioner Ralph G. Thomson maintained that while the allocation method used by the partnership for the years ending August 31, 1971 and August 31, 1972 was not proper, the firm did maintain two bona fide offices and was entitled to allocate its income. Petitioner Ralph G. Thomson did submit adjusted allocation computations for the partnership based on the three-factor method of allocation. In accordance with the aforesaid method, petitioner's distributive share of partnership income for New York State purposes was \$11,300.15 and \$10,603.41, respectively, for 1971 and 1972.

7. The partnership was originally located at 7 East 42nd Street, New York, New York. It was purchased by petitioner, Ralph G. Thomson, 77 Woodbridge Avenue, Woodbridge, New Jersey, and Charles Gonzis, 88 Princeton Street, Valley Stream, New York.

8. The articles of co-partnership entered into in September 1968 by and between petitioner Ralph G. Thomson and Charles Gonzis, under the heading "Witnesseth," read as follows:

"That the said parties have mutually agreed and hereby do mutually agree to continue a partnership hereto entered into by and between them carried on primarily at its principal office located at 88 Princeton Street, Valley Stream, New York (formerly at 7 East 42nd Street, New York City) for the practice of public accounting, under the firm name and style of Fisher and Baker, upon the following terms and conditions:..."

9. Petitioner Ralph G. Thomson contended that the office located in New Jersey is a bona fide office of the aforesaid partnership and that it was maintained for the purpose of regularly and systematically carrying on the firm's business activities.

CONCLUSIONS OF LAW

A. That the office located in petitioner Ralph G. Thomson's home did not represent a bona fide office of the partnership for the years in question.

B. That petitioner Ralph G. Thomson's distributive share of the partnership income of Fisher and Baker during 1971 and 1972 is fully taxable as income derived from New York State sources, in accordance with the meaning and intent of section 637(a)(1) of the Tax Law and 20 NYCRR 134.1.


C. That the petition of Ralph G. and Anna N. Thomson is denied and the Notice of Deficiency issued March 31, 1975 in the amount of \$1,222.36 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
January 24, 1979

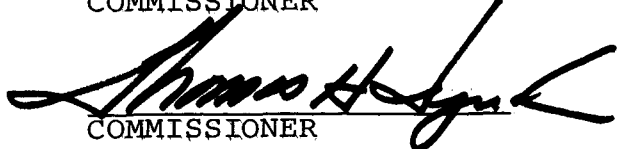
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER