

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Axel H. Baum :

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 1967 - 1974. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Axel H. Baum, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Axel H. Baum
6 Square Du Roule
Nevilly S/s 92, France

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
3rd day of October, 1980.

Richard B. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon David R. Tillinghast the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

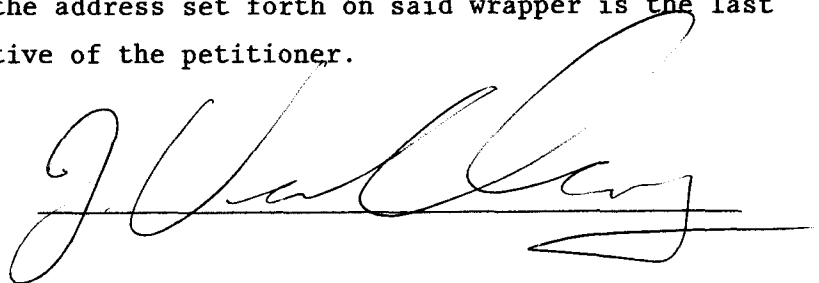
Mr. David R. Tillinghast
Hughes, Hubbard & Reed
One Wall St.
New York, NY 10005

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
3rd day of October, 1980.

Loethe Bank



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

October 3, 1980

Axel H. Baum
6 Square Du Roule
Nevilly S/s 92, France

Dear Mr. Baum:

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
David R. Tillinghast
Hughes, Hubbard & Reed
One Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AXEL H. BAUM	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1967 through	:	
1974.	:	

Petitioner, Axel H. Baum, 6 Square du Roule, Nevilly, S/s 92 France, filed a petition for a redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967 through 1974 (File No. 17453 and 10947).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 20, 1978 at 9:15 A.M. Petitioner appeared by Hughes, Hubbard & Reed, Esqs. (David R. Tillinghast, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Whether "guaranteed payments" received from a New York partnership by a nonresident partner working in a foreign country represented income subject to New York personal income tax.

II. Whether the Income Tax Bureau allocated petitioner's income for the years 1969 to 1971.

III. Whether petitioner reasonably relied on the advice of counsel in not filing New York income tax returns.

FINDINGS OF FACT

1. Petitioner, Axel H. Baum, did not file New York State income tax returns for the tax years 1967 through 1974. On September 11, 1973 the Income Tax Bureau issued a Statement of Audit Changes to petitioner detailing an income tax deficiency for the years 1967 through 1971. This statement was subsequently modified on March 31, 1975 by another Statement of Audit Changes issued to petitioner, Axel H. Baum, and Sonya G. Baum. Another Statement of Audit Changes was issued to petitioner on December 20, 1976 detailing an income tax deficiency for the years 1972 through 1974.

2. In conformity with the statements of audit changes as modified, the Income Tax Bureau, on March 31, 1975 issued a Notice of Deficiency to petitioner, Axel H. Baum, and Sonya G. Baum for an income tax deficiency for the years 1967 to 1971 of \$13,125.68 plus penalty and interest of \$8,897.71 for a total of \$22,023.39. On December 20, 1976 another Notice of Deficiency was issued to petitioner, Axel H. Baum, asserting a deficiency in income taxes for the years 1972 through 1974 of \$17,592.01 plus penalty and interest of \$10,116.89 for a total of \$27,708.90.

3. Petitioner, Axel H. Baum, is a partner in the partnership of Hughes, Hubbard & Reed which was a New York partnership during the years involved. During these years, petitioner was the partner in charge of Hughes, Hubbard & Reed's Paris office, and he maintained his residence in France.

4. By agreement with the partnership, Mr. Baum was compensated at a fixed monthly rate, regardless of the profit or loss of the firm. He did not have a percentage interest in the partnership's profits. Petitioner did receive annual "bonuses" which varied in amount from year to year.

5. Petitioner did not file New York State income tax returns in reliance on the advice of counsel that he was not required to do so.

6. Petitioner submitted copies of his 1967 through 1974 Federal income tax returns and copies of Federal audit adjustments for 1969, 1970 and 1972 through 1974. On his Federal returns, petitioner reported the guaranteed payments less the foreign income earned exclusion on the Federal schedule for supplemental income (partnership income section). Petitioner claimed two exemptions and standard deduction for 1967. Two exemptions and itemized deductions were claimed for 1968 through 1974.

7. The partnership Hughes, Hubbard & Reed filed New York State partnership returns showing an allocation percentage for each of the years at issue.

8. In each of the years at issue, the amount which the Income Tax Bureau maintained petitioner had to report to New York was limited to the amount of partnership income reported by petitioner on his Federal return. In each year this amount was less than petitioner's partnership income multiplied by the partnership allocation percentage.

CONCLUSIONS OF LAW

A. That Treasury Regulations section 1.707-1(c) provides in part that guaranteed payments are considered as made to one who is not a member of the partnership, only for the purposes of section 61(a) (relating to gross income) and section 162(a) (relating to trade or business expenses) and further provides that for the purposes of other provisions of the internal revenue laws, guaranteed payments are regarded as a partner's distributive share of ordinary income (emphasis added). Therefore, the guaranteed payments at issue were derived from New York sources within the meaning and intent of sections 637(a)(1) and 637(b)(1) of the Tax Law and are subject to personal income tax.

B. That in each of the years at issue, the Income Tax Bureau computed petitioner's New York source income by applying the partnership allocation percentage to the partnership distribution and limited the resulting amount so that it did not exceed the partnership income included in Federal adjusted gross income. Accordingly, the Income Tax Bureau properly allocated petitioner's income pursuant to section 637 of the Tax Law.

C. That the Audit Division is directed to modify the notices of deficiency to allow itemized deductions for tax years 1968 through 1971 and to allow two exemptions and itemized deductions for tax years 1972 through 1974. The Audit Division is also directed to recompute petitioner's income and itemized deductions based on the Federal audit adjustments for tax years 1969, 1970 and 1972 to 1974 in accordance with section 659 of the Tax Law.

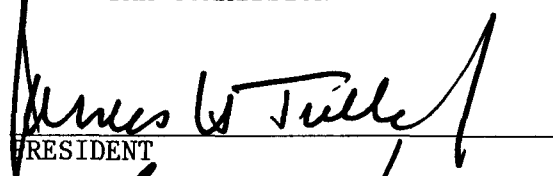
D. That petitioner's failure to file a New York tax return was due to reasonable cause, therefore, the penalties are cancelled.

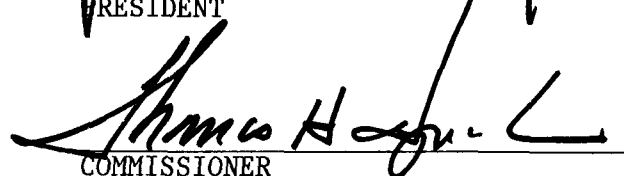
E. That the petition of Axel H. Baum is granted to the extent indicated in Conclusion of Law "C" and "D", and that, except as so granted, is in all other respects denied.

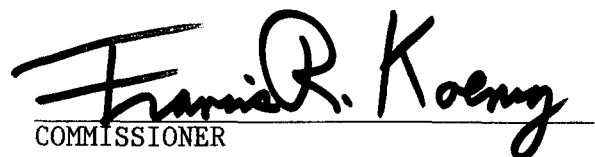
DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER