

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Patrick E. Dressler :
and S. Lucille Dressler : 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 1973 & 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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Patrick E. Dressler, and S. Lucille Dressler, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

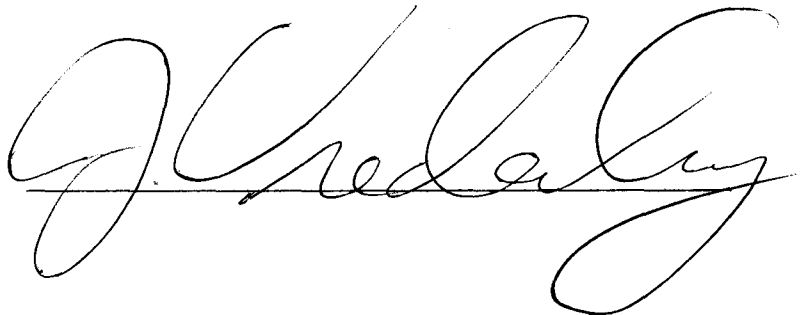
Patrick E. Dressler
and S. Lucille Dressler
99 East Ave.
Norwalk, CT

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
28th day of November, 1980.

Deborah A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Patrick E. Dressler :
and S. Lucille Dressler :
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 1973 & 1974. :

AFFIDAVIT OF MAILING

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Thomas R. Langan 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. Thomas R. Langan
Stephen A. Mishkin
Park Professional Bldg.
Ossining, NY 10562

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
28th day of November, 1980.

Robert A. Bank

J. Vredenburg

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

November 28, 1980

Patrick E. Dressler
and S. Lucille Dressler
99 East Ave.
Norwalk, CT

Dear Mr. & Mrs. Dressler:

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
Thomas R. Langan
Stephen A. Mishkin
Park Professional Bldg.
Ossining, NY 10562
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PATRICK E. DRESSLER and S. LUCILLE DRESSLER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973 and 1974.	:	

Petitioners, Patrick E. Dressler and S. Lucille Dressler, 99 East Avenue, Norwalk, Connecticut, 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 1973 and 1974 (File No. 19412).

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 April 25, 1980 at 2:45 P.M. Petitioner Patrick E. Dressler appeared with Thomas R. Langan, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner Patrick E. Dressler is an employee allowed to allocate his income based on the number of days worked within and without New York State, or a partner who must report his full share of New York partnership income.

FINDINGS OF FACT

1. Petitioners, Patrick E. Dressler and S. Lucille Dressler, filed joint New York State income tax nonresident returns for the years 1973 and 1974, on which partnership income was allocated based on the number of days worked within and without New York State. The balance due shown on the returns was

paid in full at the time of filing. Declarations of estimated tax were not filed for the years in issue.

2. On April 11, 1977, the Audit Division issued a Notice of Deficiency against the petitioners for the years 1973 and 1974 imposing taxes of \$2,771.02, plus penalty and interest of \$776.26, along with an explanatory Statement of Audit Changes on which:

- (a) partnership income was found to be taxable in full, since partnership income may not be allocated based on the number of days worked within and without New York.
- (b) Federal income was increased by petitioner's distributive share of New York City unincorporated business tax.
- (c) a penalty was imposed under section 685(c) of the Tax Law for failure to file declarations of estimated tax.

3. Petitioner Patrick E. Dressler is a resident of Connecticut and an attorney who rendered services as such during the years 1973 and 1974 for the law firm of Hall, McNicol, Marett and Hamilton (Firm/Partnership). A written agreement executed on May 1, 1972 (and subsequently revised in 1973 solely for the addition of a new partner) indicated, in part, that:

- (a) the parties to the agreement consisted of four individuals which included petitioner Patrick E. Dressler.
- (b) "the parties hereto shall engage in the practice of law as partners under the partnership name of Hall, McNicol, Marett & Hamilton."
- (c) petitioner Patrick E. Dressler was to contribute to capital \$2,700.00 in cash.
- (d) petitioner Patrick E. Dressler was entitled to 9 percent of the net profits, or net losses generated by the partnership.
- (e) petitioner Patrick E. Dressler was guaranteed an annual draw of \$45,000.00, payable in monthly installments of \$3,750.00.
- (f) a committee of three partners ("the Executive Committee") was formed to manage and control the policies, business and property of the partnership. Petitioner Patrick E. Dressler was not named as a member of the Executive Committee. However, any remaining partners could become a member in the committee in the event that a partner ceased to be a member by reason of death, resignation or removal.

5. Petitioner Patrick E. Dressler rendered sworn testimony that he did not contribute to capital; that he had no voice in the partnership; that he did not participate in meetings held by the Executive Committee; and that he, as well as the partnership, considered himself an employee.

6. The partnership did not maintain a regular place of business outside New York State during 1973 and 1974, and reported all income as New York source income.

7. Petitioner Patrick E. Dressler testified that he maintained a law office at 20 Parson's Walk, in Darien, Connecticut. This address was listed as his home address on the New York State tax returns. Petitioner contended that he rendered services within and without New York State as an employee of the partnership and, therefore, was entitled to allocate his income on that basis.

8. No evidence was submitted challenging the penalty imposed under section 685(c) of the Tax Law.

CONCLUSIONS OF LAW

A. That petitioner Patrick E. Dressler was a partner and a member of the partnership of Hall, McNicol, Marett and Hamilton during the years 1973 and 1974. Accordingly, in determining the taxable portion of partnership income to a nonresident partner, section 637 of the Tax Law applies.

B. That an allocation method based on the number of days worked within and without New York State is a method available solely to employees and corporate officers (20 NYCRR 131.16).

C. That the income received by petitioner Patrick E. Dressler during the years 1973 and 1974 from the partnership of Hall, McNicol, Marett and Hamilton was fully derived from New York sources and must be included in petitioner's New York adjusted gross income in accordance with the meaning and intent of

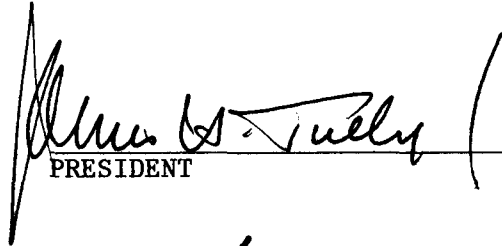
section 637 of the Tax Law and 20 NYCRR 134.

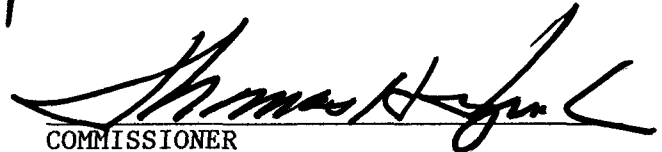
D. That the petition of Patrick E. Dressler and S. Lucille Dressler is denied and the Notice of Deficiency issued April 11, 1977 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
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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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Patrick E. Dressler, and S. Lucille Dressler, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Patrick E. Dressler
and S. Lucille Dressler
20 Parson Walk
Darien, CT

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
9th day of January, 1981.

Connie G. Hagelund

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



UNDELIVERABLE

FORWARDING EXPIRED

☐ HOLD

DATE

12/2/80

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849
May 1979

Patrick E. Dressler
and S. Lucille Dressler
99 East Ave.
Norwalk, CT

