

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert P. & Mary D. Hyde :

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 Year 1973. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

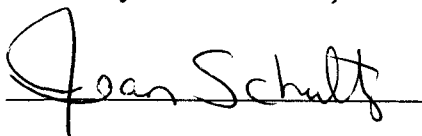
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Robert P. & Mary D. Hyde, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

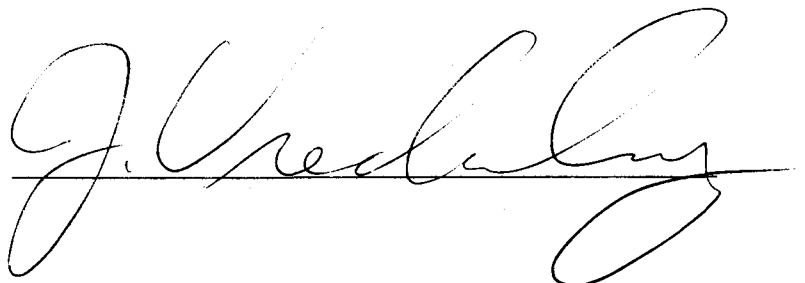
Robert P. & Mary D. Hyde
3886 Rippleton Rd.
Cazenovia, NY

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
12th day of December, 1980.


Joan Schultz



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert P. & Mary D. Hyde :
for Redetermination of a Deficiency or a Revision :
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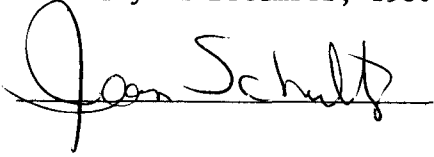
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Joseph H. Murphy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

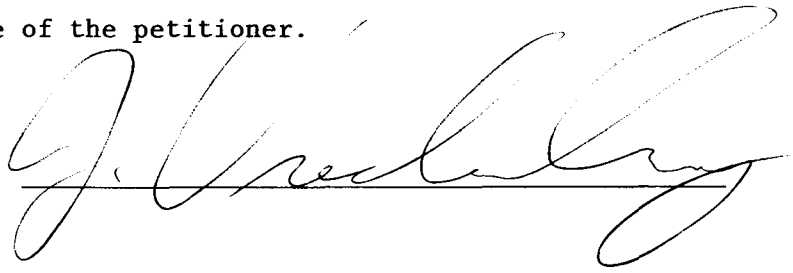
Mr. Joseph H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
1400 Mony Plaza
Syracuse, NY 13202

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
12th day of December, 1980.





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

December 12, 1980

Robert P. & Mary D. Hyde
3886 Rippleton Rd.
Cazenovia, NY

Dear Mr. & Mrs. Hyde:

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
Joseph H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
1400 Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT P. and MARY D. HYDE : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1973. :

Petitioners, Robert P. and Mary D. Hyde, 3886 Rippleton Road, Cazenovia, New York, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 19117).

A formal hearing was held before David L. Evans, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on February 6, 1980 at 9:15 A.M. Petitioners appeared by Hancock, Estabrook, Ryan, Shove & Hust, Esqs. (Joseph H. Murphy, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the salary income received by petitioner Robert P. Hyde from Rheingold Corp. during the period May 15, 1973 to December 31, 1973 was subject to New York personal income tax.

II. Whether the payment of \$62,500.00 received by Robert P. Hyde from Rheingold Corp. pursuant to an agreement dated December 21, 1973 was subject to New York personal income tax.

FINDINGS OF FACT

1. Robert P. and Mary D. Hyde filed a joint New York State income tax nonresident return for 1973 on which they reported Federal adjusted gross income of \$108,937.00 but only reported total New York income of \$24,306.00. Petitioners claimed that the total days worked during the year by petitioner Robert P. Hyde were 243; that he worked outside the State of New York 176 days and worked 67 days in New York. On Schedule A-1 he claimed an allocation as follows:

$$\frac{67}{243} \times \$75,264.00 = \$20,750.00 \text{ salary income allocable to New York.}$$

2. On the questionnaire with respect to allocation of personal service compensation, petitioner Robert P. Hyde stated that the "total days in year (or period of nonresidence)" were 135; that the total non-working days were 48; that the total working days were 87; that the total days worked outside New York State were 20 and the days worked in New York State were 67. He indicated that he worked 20 days outside New York during the period January 1, 1973 through May 15, 1973 and that none of the days worked outside New York State were days worked at home.

3. On April 11, 1977, the Audit Division issued a Notice of Deficiency to petitioners asserting additional personal income tax for the year 1973 in the amount of \$10,849.40 with interest of \$2,432.11 for a total of \$13,281.51. The Audit Division applied the fraction of $\frac{67}{87}$ to Mr. Hyde's salary income of \$75,264.00, arriving at \$57,961.93 allocable to New York State. It also allocated \$62,500.00 paid to Mr. Hyde pursuant to the agreement of December 21, 1973, *infra*, on the same basis.

4. On September 1, 1970, petitioner Robert P. Hyde entered into an employment agreement with Rheingold Corp. for a period of 5 years starting September 1, 1970 and ending on August 31, 1975 at an annual salary of not

less than \$75,000.00 "in such capacity and with such duties as may be assigned to him from time to time by the Board of Directors of the company or by the Board of Directors or principal executive officers of any corporation to whom this agreement is assigned by the company". The other pertinent provisions of the agreement were "that the employee shall devote substantially all of his time and attention ... to the affairs of the company or any corporation to whom this agreement is assigned.... As an inducement to the employee to enter into this agreement, and in consideration of his executing this agreement, and to provide an incentive to the successful administration and management of the company, and to permit him to acquire a proprietary interest in its welfare, thus to insure his continuation as such employee, the company shall on the date of employee's commencement of employment with the company or corporation to whom this agreement is assigned pursuant to Paragraph 8 hereof grant to the employee an option to purchase 7,500 shares of the common stock of the company." Mr. Hyde was entitled to purchase up to 1,500 shares of stock for each year of his employment up to a maximum of 7,500 shares.

5. On September 1, 1970, petitioner Robert P. Hyde accepted the position of Assistant to the President of Rheingold Breweries, Inc., a subsidiary of Rheingold Corp. This corporation produced and sold beer under the "Rheingold" label. In February, 1972 he was elected President of Rheingold Breweries, Inc. In November, 1972, Pepsico, Inc. tendered an offer for the shares of Rheingold Corp. Mr. Hyde opposed this take-over attempt and delayed the take-over until May 1973. On May 15, 1973 the take-over took place.

6. The first official act of the new Board of Directors of Rheingold Corp. was the removal of petitioner Robert P. Hyde as president of Rheingold Breweries, Inc. as well as the removal of vice-presidents who reported to him.

The employment agreement between Mr. Hyde and Rheingold Corp. continued in full force. After May 15, 1973, Mr. Hyde no longer had an office at the headquarters of Rheingold Breweries, Inc. in Brooklyn, New York. After May 15, 1973, Rheingold Corp. did not ask Mr. Hyde to perform any duties although he held himself available pursuant to the terms of his employment agreement. Mr. Hyde continued to receive wages in accordance with the terms of the employment agreement for the period May 16, 1973 to December 31, 1973.

7. At the time of his removal as president of Rheingold Breweries, Inc. petitioner Robert P. Hyde had the right under the stock option to purchase 4,500 shares of common stock of Rheingold Corp. Said petitioner's option price was \$26.875 per share but the successful tender offer price was only in the range of \$19.00 per share. When the tender offer was accepted, Rheingold Corp. stock was no longer publicly traded.

8. Petitioner Robert P. Hyde contends that after May 15, 1973, he attempted on his own initiative to locate a buyer for the assets of Rheingold Breweries Inc. He did not represent the company as an agent and had no authority to make the sale of those assets. He claims his activities in that respect consisted of phone calls made from his home in Connecticut and that he spent parts of 20 to 30 days in such efforts. He was not successful in his efforts. He, therefore, claims that the salary income he received for the period May 16, 1973 to December 31, 1973 was attributable to the aforementioned activities on behalf of his employer and constitute income attributable to out of state sources. After the acquisition by Pepsico, Inc., Rheingold Breweries, Inc. ceased operations. At a later date the property of Rheingold Breweries, Inc. was sold to Chock-Full-O' Nuts Corporation which was unsuccessful in operating it.

9. On December 21, 1973 petitioner Robert P. Hyde entered into an agreement with Rheingold Corp. and Rheingold Breweries, Inc. which provided, in part, that:

"1. Said Employment Agreement (referring to the agreement of employment between petitioner and Rheingold Corp. dated September 1, 1970), and employment and Stock Option are hereby terminated and each of the parties does hereby release and discharge the other from any and all claims thereunder or arising during or in the course of said employment.

2. Concurrently herewith the Company (Rheingold Corp.) has delivered to the Employee its check for \$62,500, the receipt of which the Employee does hereby acknowledge."

10. None of the \$62,500.00 received by petitioner Robert P. Hyde as more fully set forth in Finding of Fact "9" supra was reported by petitioners on their nonresident New York income tax return for 1973.

CONCLUSIONS OF LAW

A. That petitioner Robert P. Hyde was not required to nor did he perform any services for Rheingold Corp. after May 15, 1973, pursuant to his contract of employment with the company.

B. That the payments made to said petitioner by Rheingold Corp. after May 15, 1973 were required by the employment agreement and were a contractual obligation of the company.

C. That the salary payments received by Mr. Hyde for the period May 16, 1973 through December 31, 1973 were properly attributable to New York sources within the intent and meaning of section 632 of the Tax Law.

D. That the \$62,500.00 received by Mr. Hyde on December 21, 1973 for cancellation of the employment agreement, termination of employment and surrender of the stock option under the employment contract was compensation for personal services taxable as ordinary income and not capital gain (Leo Dalbo v. Commr., 28 TCM 1171; Seserman v. Commr., 21 TCM 1042; see also Matter of Secrist, State Tax Commission September 24, 1974; Matter of Loring, State Tax Commission March 15, 1966.

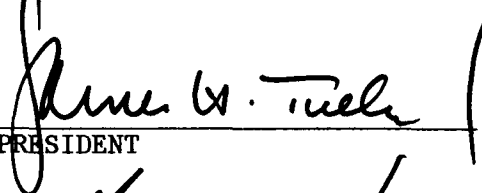
E. That the Audit Division properly computed the allocation of petitioner Robert P. Hyde's income for the year 1973 attributable to New York sources.


F. That the petition of Robert P. and Mary D. Hyde is hereby denied and the Notice of Deficiency is sustained.

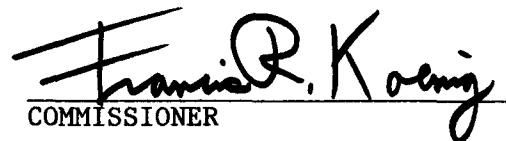
DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER