

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Sal A. & Antoinette M. Nastro :

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 1971 - 1972. :

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Sal A. & Antoinette M. Nastro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sal A. & Antoinette M. Nastro  
Mill Stream Rd.  
Stamford, CT 06930

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  
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Sal A. & Antoinette M. Nastro :  
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 1971 - 1972. :

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Louis M. Cascio 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. Louis M. Cascio  
Hurdman & Cranstoun, CPA's  
330 Main St.  
Danbury, CT 06810

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  
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

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

February 22, 1980

Sal A. & Antoinette M. Nastro  
Mill Stream Rd.  
Stamford, CT 06930

Dear Mr. & Mrs. Nastro:

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  
Louis M. Cascio  
Hurdman & Cranstoun, CPA's  
330 Main St.  
Danbury, CT 06810  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SAL A. NASTRO and ANTOINETTE M. NASTRO	:	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.	:	

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Petitioners, Sal A. Nastro and Antoinette M. Nastro, Mill Stream Road, Stamford, Connecticut 06930, 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. 13334).

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 December 12, 1978 at 1:15 P.M. Petitioners appeared by Louis M. Cascio, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner Sal A. Nastro, a nonresident partner, can allocate income received from a New York State partnership.

FINDINGS OF FACT

1. Petitioners, Sal A. Nastro and Antoinette M. Nastro, filed a joint New York State Income Tax Nonresident Return for the year 1971 on December 5, 1972. Petitioner Sal A. Nastro allocated his salary income based on the number of days worked within and without New York State. On February 6, 1973, the Income Tax Bureau issued a Notice and Demand For Payment of Income Tax Due, which corrected an error on the allocation schedule shown on the return. Petitioners paid an additional tax due of \$80.24, plus penalty and interest.

2. Petitioners, Sal A. and Antoinette M. Nastro, filed a joint New York State Income Tax Nonresident Return for the year 1972 on June 28, 1973, reporting for New York State income tax purposes, salary income of \$13,000.00 and partnership income of \$5,758.00. The aforementioned return did not indicate whether an allocation method was utilized.

3. On January 16, 1975, the Income Tax Bureau received an "amended return" for the year 1972, on which Federal audit adjustments were reported. In addition, salary income of \$13,000.00 and partnership income of \$18,267.03 were allocated based on the number of days worked within and without New York State. An additional tax due of \$53.09 was remitted with the "amended return".

4. On April 11, 1975, the Income Tax Bureau issued a Notice of Deficiency for the years 1971 and 1972, along with an explanatory Statement of Audit Changes, which stated:

"The audit of the partnership Guided Growth Ventures discloses that you were in receipt of salary and fees from the partnership. As the partnership did not report any office outside New York State and allocated income, these fees and salaries are fully taxable to New York State. Deduction for life insurance is limited to \$100.00 for 1971 and \$50.00 for 1972 for each taxpayer."

The Notice of Deficiency was issued for \$858.81 for personal income tax, plus interest for the year 1971 and \$2,813.34 for personal income tax, plus interest for the year 1972. However, the deficiency did not take into consideration the arithmetic corrections previously made for the year 1971 by the Income Tax Bureau on February 6, 1973 and credit was not given for the additional tax paid of \$80.24.

5. The Income Tax Bureau asserted a greater deficiency for the year 1971 at the hearing by incorporating the arithmetic corrections into the Notice of Deficiency and granting petitioners credit of \$80.24 for additional tax previously paid. These changes resulted in a greater deficiency of \$1,131.41, plus interest for the year 1971.

6. Petitioner Sal A. Nastro was employed by International Business Machines, Incorporated until May, 1971. On July 1, 1971, he became a partner in a partnership doing business under the name and style of Guided Growth Ventures, with its principal office at 20 Exchange Place, in the City and State of New York.

7. Guided Growth Ventures was formed pursuant to the Partnership Law of the State of New York for the purpose "to invest in, and provide investments counseling for, venture capital situations..."

8. Petitioner Sal A. Nastro, the managing partner and sole active partner, was required to seek and investigate investment opportunities on behalf of the partnership. The partnership agreement of July 1, 1971 provided, in part;

(a) That petitioner Sal A. Nastro would "receive a salary of \$35,000.00 per annum, payable monthly for his services..."

(b) That the "first \$15,000.00 of the total annual cash consulting fees paid to the partnership for services rendered directly by Sal Nastro will be remitted to him quarterly as earned."

(c) That petitioner Sal A. Nastro had "general control and supervision over the ordinary business of the partnership..."

9. Petitioner Sal A. Nastro rendered consulting services to Metpath, Inc. on behalf of the partnership during the years 1971 and 1972. These services were performed at the corporate headquarter offices of Metpath, Inc. in Hackensack, New Jersey, where he was provided with both an office and secretarial support. In addition, petitioner rendered consulting services on behalf of the partnership at firms located in Pennsylvania, Florida and New York during the year 1972.

10. Petitioner Sal A. Nastro contended that the partnership returns filed by Guided Growth Ventures for the years 1971 and 1972 erroneously listed only one place of business at 20 Exchange Place in New York City. He contended that the partnership also had an office at Metpath, Inc. in Hackensack, New Jersey. He also contended that he maintained an office at 7 Horizon House, Fort Lee, New Jersey. No evidence was submitted indicating whether Guided Growth Ventures filed amended partnership returns for the years 1971 and 1972 listing a place of business outside New York State, along with a schedule allocating partnership income from sources within and without New York State. In addition, no evidence was submitted indicating whether the partnership disagreed with or protested the findings of the partnership audit conducted by the Income Tax Bureau.

11. Petitioner Sal A. Nastro did not submit any evidence to indicate whether Guided Growth Ventures filed partnership returns with other states, in addition to New York State, during the years 1971 and 1972.

12. Petitioner Sal A. Nastro argued that his share of partnership income reported for the years 1971 and 1972 represented salary income and fees received in consideration for services rendered within and without New York State.

#### CONCLUSIONS OF LAW

A. That even though petitioner Sal A. Nastro traveled outside New York State for the purpose of performing duties in connection with the partnership, and even though services were performed for or on behalf of, persons or corporations located outside New York State, a regular place of business was not maintained by the partnership outside New York State and business activities were not considered as being carried on outside New York State; therefore, no allocation is allowed within the meaning and intent of sections 632(c) and 707(a) of the Tax Law and 20 NYCRR 131.10 and 131.11.

B. That petitioner Sal A. Nastro was a nonresident partner of a New York partnership and that, in determining sources (as either within or without New York State) of a nonresident partner's share of partnership income, no effect should be given to a provision in the partnership agreement which characterizes payments to the partner as salary or other consideration paid or distributable for services rendered to the partnership by the partner in accordance with section 637(b) of the Tax Law and 20 NYCRR 134.2.

C. That an allocation of income based on the number of days worked within and without New York State is an allocation method available to non-resident employees (20 NYCRR 131.16).

D. That all income paid or distributable by Guided Growth Ventures to petitioner Sal A. Nastro during the years 1971 and 1972 must be included in his New York adjusted gross income within the meaning and intent of section 632 of the Tax Law.


E. That the petition of Sal A. Nastro and Antoinette M. Nastro is denied and the Notice of Deficiency issued April 11, 1975 is sustained along with the changes which result in a greater deficiency. Such tax shall be due together with such additional interest as may be lawfully owing. The Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued April 11, 1975 to include the greater deficiency asserted in accordance with Findings of Fact '5' of this decision.

DATED: Albany, New York

**FEB 22 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER