

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kenneth & Marilyn Pearson :
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 1969 - 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 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Kenneth & Marilyn Pearson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenneth & Marilyn Pearson
11 Riverside Dr.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp

J. Van Cuy

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Kenneth & Marilyn Pearson :

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 1969 - 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 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Joseph R. Satz 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 R. Satz
Forsythe, LeViness, Harnett & Pearson
375 Park Ave.
New York, NY 10022

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
2nd day of January, 1980.

Joanne Knapp

[Signature]

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

January 2, 1980

Kenneth & Marilyn Pearson
11 Riverside Dr.
New York, NY 10023

Dear Mr. & Mrs. Pearson:

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 R. Satz
Forsythe, LeViness, Harnett & Pearson
375 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
KENNETH PEARSON and MARILYN PEARSON : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Law Law for the Years :
1969, 1970, 1971 and 1972.

Petitioners, Kenneth Pearson and Marilyn Pearson, 11 Riverside Drive, New York, New York 10023, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969, 1970, 1971 and 1972 (File Nos. 12745 and 16429).

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 May 19, 1978 at 10:45 A.M. Petitioners appeared by Joseph Satz, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether a partnership had a place of business outside New York State and, if so, whether petitioner Kenneth Pearson is allowed to allocate his distributive share of income from the partnership.

FINDINGS OF FACT

1. Petitioners, Kenneth Pearson and Marilyn Pearson, filed joint New York State income tax nonresident returns for 1969, 1970 and 1971. On said returns, petitioners allocated to New York 70% of partnership distributions

made to petitioner Kenneth Pearson by the law firm of Forsythe, McGovern, Pearson & Nash for the years at issue. The allocations were based on the percentage of the firm's fees distributed to New York.

2. Petitioner Kenneth Pearson filed a New York State Income Tax Resident Return (Form IT-201) for 1972, on which he subtracted partnership fees of \$3,560.00 as income earned without New York State.

3. On April 13, 1973 as the result of an audit, the Income Tax Bureau issued a Notice of Deficiency to petitioners for 1969 and 1970 in the amount of \$2,606.02, plus interest of \$390.87, for a total of \$2,996.89. On April 11, 1975, it issued another notice to petitioner Kenneth Pearson for 1971 and 1972 in the amount of \$3,285.02, plus interest of \$573.31, for a total of \$3,858.33. On both, the Income Tax Bureau held that the partnership income was taxable to New York in full, and that such distribution could not be allocated, since the partnership did not maintain an office in Connecticut. The portion of the deficiency that relates to 1972 was conceded and is not at issue.

4. During 1969, 1970 and 1971, petitioner Kenneth Pearson was a resident of Connecticut and a member of both the New York and Connecticut Bars.

5. Petitioner was a partner in the New York law firm of Forsythe, McGovern, Pearson & Nash. During 1969, 1970 and 1971, petitioner maintained an office at his home in Connecticut and practiced law from that location, in order to handle (on behalf of the partnership) a substantial trust and estate business in Connecticut. Petitioner was required to list himself and his home as the Connecticut law office of record, in order to comply with rules and procedures promulgated by the State of Connecticut and its judicial agencies. Connecticut judicial procedures require, in part, the following:

- a) Court pleadings be signed by a commissioner of the Superior Court, and only a member of the Connecticut Bar is such a commissioner.
- b) Court papers are required to have a Connecticut office address set forth thereon.
- c) Notification of pending matters by the courts of Connecticut be mailed to an attorney's office which had to be located within the State of Connecticut.

6. Petitioner used the home-office (a) to prepare court papers, (b) to meet with the partnership's clients, and (c) to confer with potential clients.

7. Petitioner Kenneth Pearson paid all expenses for maintaining the office at his home. Frequently he utilized his wife's services as an experienced legal secretary and as a liaison between himself and the Connecticut courts; however, petitioner's wife was never compensated for her services by petitioner or the partnership.

8. All fees earned as a result of petitioner's activities in Connecticut were forwarded to the partnership.

9. The partnership was divided into two separate divisions, namely, the Forsythe Division and the McGovern Division, and partners of the law firm were members of either one or the other. The income earned by a division belonged solely to the partners of that division. Petitioner had a 22% interest in the profits and losses of the Forsythe Division.

10. Petitioners submitted a schedule showing the gross income of the Forsythe Division, and that portion thereof which constituted Connecticut source income for the years at issue. Accordingly, petitioner maintains that 85%, 82% and 84% for 1969, 1970 and 1971, respectively, constituted the percentage of his partnership distributive income which was taxable under Article 22 of the Tax Law.

11. The partnership return filed for 1971 showed the net income from sources within and without New York State which resulted in a business allocation percentage of 93.1%. Petitioners did not submit a copy of the partnership return filed for 1969 and 1970, nor did they submit a schedule showing how partnership New York net income was determined.

12. Petitioner maintained that the Connecticut office was utilized as a base of operations on behalf of the partnership and was used primarily to service partnership clients, thereby generating partnership income. The office was a separate room used for this and for no other purpose. It was panelled in mahogany and had a picture window. It contained a desk, a swivel chair, a telephone, a nine-foot wide formica countertop, two metal file cabinets for clients' files, a thermofax copying machine, an adding machine and an IBM electric typewriter.

CONCLUSIONS OF LAW

A. That the New York partnership of Forsythe, McGovern, Pearson & Nash had a place of business in Connecticut, where its affairs were systematically and regularly carried on, with a fair measure of permanency and continuity; accordingly, it was carrying on a business in the State of Connecticut, in accordance with the meaning and intent of section 632 of the Tax Law, 20 NYCRR 131.4(a) and 20 NYCRR 131.12.

B. That the New York adjusted gross income of petitioner Kenneth Pearson, a nonresident partner in the New York partnership of Forsythe, McGovern, Pearson & Nash, must include his distributive share of partnership income to the extent that it is derived from New York sources attributable to a business carried on in New York State, in accordance with the meaning and intent of section 637 of the Tax Law and 20 NYCRR 134.1.

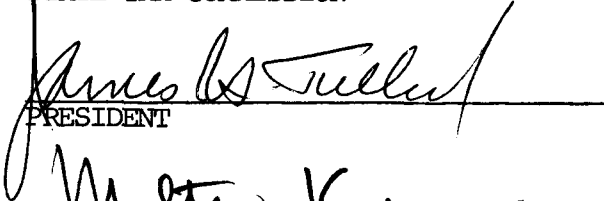
C. That the distributive share of partnership income received by petitioner Kenneth Pearson for 1971 from Forsythe, McGovern, Pearson & Nash was subject to allocation to the extent shown in Findings of Fact No. 11, above; that petitioners failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show the partnership business allocation percentage for 1969 and 1970 based on a ratio of New York net income to total Federal net income; therefore, the entire share of partnership income for those years is considered income from New York sources.

D. That the petition of Kenneth and Marilyn Pearson is denied and the Notice of Deficiency issued April 13, 1973, for 1969 and 1970, is sustained, together with such additional interest as may be lawfully owing; that the petition of Kenneth Pearson, for 1971, is granted to the extent shown in Conclusion of Law "C", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER