

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert P. Knapp, Jr. :
and Elise F. Knapp : 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 Year 1973. :

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 23rd day of January, 1981, he served the within notice of Decision by certified mail upon Robert P. Knapp, Jr., and Elise F. Knapp, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert P. Knapp, Jr.
and Elise F. Knapp
RFD #3
Mountain Rd.
Redding, CT 06896

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
23rd day of January, 1981.

Conner P. Hagelund

J. Vredenburg

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

January 23, 1981

Robert P. Knapp, Jr.
and Elise F. Knapp
RFD #3
Mountain Rd.
Redding, CT 06896

Dear Mr. & Mrs. Knapp:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ROBERT P. KNAPP, JR. and ELISE F. KNAPP
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1973.

DECISION

Petitioners, Robert P. Knapp, Jr. and Elise F. Knapp, RFD #3, Mountain Road, Redding, Connecticut 06896, 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. 18599).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 25, 1980 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner Robert P. Knapp, Jr., a nonresident, may allocate income received from a New York partnership, of which he is a managing member, on the basis of days worked within and without New York State.

FINDINGS OF FACT

1. Petitioners, Robert P. Knapp, Jr. and Elise F. Knapp, filed a New York State income tax nonresident return for 1973. Petitioner Robert P. Knapp, Jr. allocated the income received from a New York partnership, of which he was a managing member, on the basis of days worked within and without New York State.

2. On February 27, 1977, the Audit Division issued a Statement of Audit Changes against petitioners on the ground that petitioner Robert P. Knapp, Jr., as a managing member in the New York partnership of the law firm of Windels, Merritt and Ingraham ("WMI"), may not allocate income derived therefrom on the basis of days worked within and without New York State. Accordingly, it issued a Notice of Deficiency under same date against petitioners asserting personal income tax of \$1,555.00, plus interest of \$335.16, for a total of \$1,890.16.

3. During the tax year 1973, petitioner Robert P. Knapp, Jr., a resident of Connecticut, was a partner in a law firm whose only office was in New York. Acting on behalf of the partnership, he performed various nonlegal services outside of New York for foreign clients, which neither maintained offices nor did any business in New York. These services could not have been performed satisfactorily in New York, but the fees which they generated were paid directly to the partnership.

4. The original partnership return for 1973 (Form IT-204), dated March 29, 1974 was prepared by Touche Ross and Co., and signed by petitioner Robert P. Knapp, Jr., as partner, made no provision for allocation of income for a nonresident partner. An amended partnership return for subject year received by the Audit Division on April 15, 1977 and signed only by petitioner Robert P. Knapp, Jr. had annexed thereto a New York State nonresident partner allocation schedule (Form IT-204A).

5. Petitioner Robert P. Knapp, Jr. contended that his distributive share of the partnership income resulting from his workdays outside of New York in the service of foreign clients should be excluded in computing his New York

taxable income. Petitioner argued that in computing the income tax properly due the State of New York for the year in question on his income from WMI, he applied the same allocation formula to his income with respect to services performed within New York and outside New York as would be applied if the services had been performed by him for a corporation with an office outside New York State. Petitioner also argued that by imposing a tax on that portion of his partnership income attributable to services performed by him outside the State of New York, the State is proceeding in violation of the Due Process and the Commerce Clause of the United States Constitution, Article 1, Sect. 8, cl. 3.

CONCLUSIONS OF LAW

A. That petitioner Robert P. Knapp, Jr.'s distributive share of the partnership income was either derived from or connected with New York sources, and is, therefore, subject to New York State income tax within the meaning and intent of section 637(a)(1)) of the Tax Law. That the New York law firm of which petitioner Robert P. Knapp, Jr. was a partner, was retained to serve the foreign clients and in rendering the subject services, petitioner acted as an agent of "WMI" and not in his individual capacity. Further, the fees generated by his services were paid directly to "WMI", and petitioner received only his distributive share thereof.

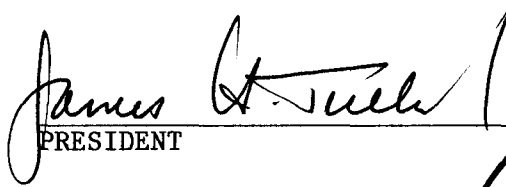
B. That the constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administration level to declare such laws unconstitutional. Therefore, it must be presumed that the Tax Law is constitutional to the extent that it relates to the imposition of income tax liability on the petitioner.

C. That the petition of Robert P. Knapp, Jr. and Elise F. Knapp is denied and the Notice of Deficiency issued on February 27, 1977 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

JAN 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER