

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Robert Scobey
and Eugenia Scobey

:

:

:

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 :
1974 & 1975.

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Robert Scobey and Eugenia Scobey the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Scobey
and Eugenia Scobey
Douglass Rd.
Bernardsville, NJ 07924

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
14th day of August, 1981.

Connie G. Hagelund

J. Vredenburg

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

August 14, 1981

Robert Scobey
and Eugenia Scobey
Douglass Rd.
Bernardsville, NJ 07924

Dear Mr. & Mrs. Scobey:

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 Petitions	:	
	:	
of	:	
	:	
ROBERT SCOBEEY and EUGENIA SCOBEEY	:	DECISION
	:	
for Redetermination of Deficiencies or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1974 and 1975.	:	

Petitioners, Robert Scobey and Eugenia Scobey, Douglass Road, Bernardsville, New Jersey 07924, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1974 and 1975 (File Nos. 24077 and 27402).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 23, 1980 at 10:45 A.M. Petitioner Robert Scobey appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the New York City unincorporated business tax is an "income tax", which must be added to Federal adjusted gross income in determining New York adjusted gross income.

II. Whether petitioner, a nonresident partner of a New York partnership, may allocate his income derived from such partnership to sources within and without New York State although the partnership does not allocate.

FINDINGS OF FACT

1. Petitioners, Robert Scobey and Eugenia Scobey, timely filed joint New York State income tax nonresident returns for the years 1974 and 1975 wherein

Robert Scobey (hereinafter petitioner) allocated income he derived from the New York partnership of Cooper, Dunham, Clark, Griffin & Moran, to sources within and without New York State.

2. On December 15, 1977, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1974 wherein it disallowed petitioner's claimed allocation on the ground that a "distributive share of partnership income is not allocable as the partnership does not maintain a bona fide place of business outside New York State." Additionally, an adjustment was made increasing petitioner's New York adjusted gross income by an amount representing his distributive share of the New York City unincorporated business tax deduction taken on the partnership return of Cooper, Dunham, Clark, Griffin & Moran. Accordingly, a Notice of Deficiency was issued on March 24, 1978 asserting personal income tax of \$927.90, plus interest of \$217.81, for a total due of \$1,145.71.

3. On April 13, 1979, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1975 wherein adjustments were made of a nature identical to those as previously described for taxable year 1974. Accordingly, a Notice of Deficiency was issued under the same date asserting additional personal income tax of \$1,487.13, plus interest of \$378.18, for a total due of \$1,865.31.

4. Petitioner contended that the New York City unincorporated business tax is a "business tax" rather than an "income tax". As such, he claimed that said tax is not required to be added to Federal adjusted gross income.

5. During the years at issue, petitioner was a nonresident member partner of Cooper, Dunham, Clark, Griffin & Moran, a New York law partnership. The method by which the partnership distributed income to its members was as

follows: Service billings were allocated to the particular partner who actually rendered the service. Under the terms of the partnership agreement, when payment was received, a certain percentage of the receipt was directly credited to the account of the partner who rendered the service. The remaining percentage was then credited to the partnership profit and loss account for the specific purpose of covering expenses. At the close of the fiscal year, any monies left would then be distributed equally between the partners. Petitioner contended that only this year end distribution could properly be considered a "distributive share". He claimed that the partnership actually operated under an "office expense sharing arrangement" and was akin to a "collection of sole proprietorships". Petitioner contended that he is entitled to allocate his income to sources within and without New York State since his income was derived directly from his own personal services, some of which were rendered without the State.

6. Petitioner allocated his partnership income on each return for the years at issue on an hourly basis.

7. Cooper, Dunham, Clark, Griffin & Moran did not allocate its income during the years at issue herein.

CONCLUSIONS OF LAW

A. That the New York City unincorporated business tax is an "income tax" within the meaning and intent of chapter 46, title S of the Administrative Code for the City of New York.

B. That the amount representing petitioner Robert Scobey's distributive share of New York City unincorporated business tax deduction taken on the partnership returns of Cooper, Dunham, Clark, Griffin & Moran, must be added to Federal adjusted gross income in determining New York adjusted gross income for

the years 1974 and 1975 in accordance with the meaning and intent of section 612(b)(3) of the Tax Law.

C. That no effect shall be given to a provision in the partnership agreement which allocates to a nonresident partner, as income or gain from sources outside New York, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside New York to partnership income or gain from all sources (20 NYCRR 134.2(b)).

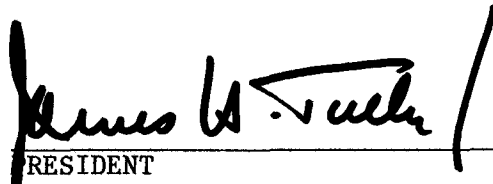
Accordingly, since the partnership did not allocate income to sources without New York State, petitioner Robert Scobey may not allocate any of his income derived from such partnership to sources without the State within the meaning and intent of section 637(b) of the Tax Law (see Matter of Petition of Harvey and Beatrice Mortimer, signed January 9, 1974).

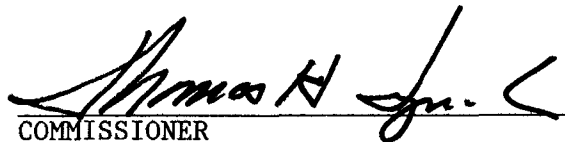
D. That the petitions of Robert Scobey and Eugenia Scobey are denied and the notices of deficiency dated March 24, 1978 and April 13, 1979 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 14 1981


RESIDENT


COMMISSIONER


COMMISSIONER