

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
William T. Hough	:	
and Norma P. Hough	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision	:	
of a Determination or a Refund of NYS & NYC Income	:	
Tax under Article 22 & 30 of the Tax Law for the	:	
Year 1976.	:	

State of New York
County of Albany

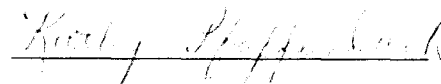
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon William T. Hough and Norma P. Hough, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William T. Hough
and Norma P. Hough
312 S. Finley Avenue
Basking Ridge, NJ 07920

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
29th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 29, 1982

William T. Hough
and Norma P. Hough
312 S. Finley Avenue
Basking Ridge, NJ 07920

Dear Mr. & Mrs. Hough:

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 & 1312 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 30, 1981 at 1:40 P.M. and was continued to conclusion on February 2, 1981 at 9:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether petitioners properly allocated 50 percent of petitioner William T. Hough's wage income from the practice of law to New York sources.

II. Whether petitioners' capital gains from the sale of securities through the New York office of Merrill Lynch was derived from or connected with New York sources and thus taxable to non-residents.

III. Whether petitioners failed to make a proper subtraction modification in the sum of \$1,740.53 for state and local income taxes which were included as part of their federal itemized deductions.

IV. Whether petitioners failed to make a proper addition modification as required by Tax Law Section 612(b)(8) for F.I.C.A. taxes.

FINDINGS OF FACT

1. Petitioners, William T. Hough and Norma P. Hough, timely filed a New York State Income Tax Nonresident Return for 1976 on which they indicated that they were residents of the State of New Jersey.

2. It is not asserted that petitioner Norma P. Hough had any New York taxable income; the Notice of Deficiency was issued against her solely for the reason that she filed jointly with her husband petitioner William T. Hough.

3. On October 13, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting as follows:

<u>Additional Tax Due or Tax Deficiencies</u>	<u>Total Penalty and/or Interest</u>	<u>Amount Due</u>	<u>Balance Due</u>
\$4,783.29	\$608.21	\$5,391.50	\$5,391.50

4. The basis for the income tax proposed in the Statement of Audit Changes dated July 24, 1978 was stated in part as follows:

"... the allocation of wages for the taxable year 1976...[has been] disallowed.

... the gain from the sale or exchange of capital assets... is considered long-term and derived and connected from New York State sources.

Since New York State taxes long term capital gains at 60% rather than 50%, 20% of the long term capital gain deduction must be added when computing total New York income.

Pursuant to Section 612(b)(8) you are required to add in the computation of total New York income the FICA taxes paid by your professional service corporation in the amount of \$757.35.

All income taxes included in your Federal itemized deductions must be subtracted when determining New York itemized deductions. Based upon information available, this amount is \$1,740.53.

Pursuant to Section 620¹ of the New York State Income Tax Law, a taxpayer with items of tax preference in excess of the specific deduction of \$5,000.00 must file Form IT-220 and pay any minimum income tax due. Our computation indicates your items of tax preference to be \$27,200.00; the long term capital gain deduction of \$34,000.00 less the modification for long term capital gains of \$6,800.00.

To arrive at New York itemized deductions, Section 615(c)(4) of the State Tax Law requires that a modification must be made for allocable expenses attributable to items of tax preference in excess of the specific deduction."

5. Petitioner William T. Hough is an attorney at law, practicing as a professional corporation, incorporated under the laws of Virginia. His specialty is patents, trademarks and copyrights. He has offices in New York City, Basking Ridge, New Jersey, Richmond, Virginia and Washington, D.C.

6. The Basking Ridge office is the original and prime office. It is annexed to petitioners' home and it houses most of petitioner William T. Hough's legal library and legal files and records.

7. The Richmond, Virginia and Washington, D.C. offices were maintained primarily for the receipt of mail. However, the Washington, D.C. office was also maintained in order that Mr. Hough could qualify for admission to the District of Columbia Bar and for the convenience of clients and litigation in the District of Columbia.

8. Mr. Hough testified that he worked two days a week, i.e. Tuesdays and Fridays, and sometimes on Saturdays and Sundays and at times in the evenings and at night, Mondays through Fridays, out of the Basking Ridge Office. He also testified that "on Mondays, Wednesdays and Thursdays...[he] was normally in the New York Office". Mr. Hough failed to offer any positive evidence to substantiate this assertion.

¹ The New York minimum taxable income of a nonresident individual is defined in section 641 of the Tax Law and not in section 620.

9. Mr. Hough conducted 95 percent of his legal research in his Basking Ridge office and 5 percent in his New York office.

10. Mr. Hough asserted that approximately 40 percent of the income from his law practice was attributed to New York sources notwithstanding he allocated 50 percent to New York sources.

11. Mr. Hough did not maintain separate invoice files and separate accounting records for each of his law offices. His reason for not doing so, he said, was:

"It's almost an impossibility...to keep up with all of the accounting matters and all the tax matters and everything that has to be done. If I didn't hire some of this out, I would spend all of...[my] time taking care of government forms, and ...I wouldn't have any time to practice law."

12. Mr. Hough's books and records as they pertained to his law practice were not audited by the Audit Division nor did the Division ever advise him of a desire to conduct an audit, nor did he ever offer them to the Division for such a purpose.

13. Mr. Hough maintained that his method of allocating law practice income to New York sources is the same that was approved for the income tax years 1973, 1974 and 1975 (File No. 21839).

14. The capital gains that gave rise to that portion of the asserted tax deficiency herein were derived from the sale of securities, by petitioners, through a New York office of Merrill Lynch.

15. The petitioners paid New Jersey income tax on the aforementioned capital gains, herein.

16. The petitioners admitted to the tax liability for failing to modify their Federal adjusted gross income by the sum of \$757.35 for F.I.C.A. taxes for the aforementioned professional corporation (see Finding of Fact #5).

17. Petitioners conceded the adjustment made for subtracting state and local income taxes of \$1,740.53 from their Federal itemized deductions.

CONCLUSIONS OF LAW

A. That New York City personal income tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references to the corresponding sections of Article 30.

B. That the burden of proof negating the asserted tax deficiency herein is upon the petitioners (Tax Law section 689(e)).

C. That the petitioners failed to sustain their burden of proof regarding their allocation of petitioner William T. Hough's wage income from the practice of law to New York sources.

D. That the capital gains derived from the sale of securities through the New York office of Merrill Lynch did not constitute items of income derived from or connected with New York sources within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.5. In connection therewith, the modification made pursuant to section 615(c)(4) of the Tax Law is cancelled.

E. That the petition of William T. and Norma P. Hough is granted to the extent shown in Conclusion of Law "D" supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

ACTIVE PRESIDENT

COMMISSIONER

COMMISSIONER