

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Stanley R. & Barbara Rawn

:

:

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 :  
1969 & 1970.

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Stanley R. & Barbara Rawn, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley R. & Barbara Rawn  
30 Benenson Dr.  
Cos Cob, CT 06807

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  
4th day of August, 1982.

*Amie A. Hayles*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

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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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Lawrence T. Warble the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence T. Warble  
Breed, Abbott & Morgan  
153 East 53rd Street  
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  
4th day of August, 1982.

*Ramie A. Hegland*

*J. Vredenburg*

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

August 4, 1982

Stanley R. & Barbara Rawn  
30 Benenson Dr.  
Cos Cob, CT 06807

Dear Mr. & Mrs. Rawn:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Lawrence T. Warble  
Breed, Abbott & Morgan  
153 East 53rd Street  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petitions  
of  
STANLEY R. RAWN, JR. and BARBARA A. RAWN  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1969 and 1970.

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DECISION

Petitioners, Stanley R. Rawn, Jr. and Barbara A. Rawn, 30 Beneson Drive, Cos Cob, Connecticut, filed petitions for redetermination of a deficiency and for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970 (File No. 14243).

A formal hearing was held before Armando Montano, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1977 at 1:20 P.M. and continued to conclusion before Frank Romano, Hearing Officer, at the same offices on June 23, 1978 at 9:20 A.M. Petitioners appeared by Breed, Abbott and Morgan, Esqs. (Lawrence T. Warble and David R. Hardy, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether petitioners properly allocated their income for the years 1969 and 1970.

FINDINGS OF FACT

1. On October 16, 1973, petitioners, Stanley R. Rawn, Jr. and Barbara A. Rawn, filed a claim for refund of personal income tax in the amount of \$10,687.00, plus interest for the year 1969. Basis for the claim was an error in the allocation of the wages. This was brought to their attention by the Income

Tax Bureau in a letter to petitioners' representative dated November 10, 1972:

"The withholding statements attached to your client's return for the year 1969 indicates income from Pentagon Petroleum, Inc. and Pioneer Lands Corporation. However, in allocating this income the two incomes were combined and allocated on the same basis.

Since separate allocation of salary income is required when income is received from two or more employers during the year, please complete one of the enclosed questionnaires for each employer showing separate allocation of each."

On said questionnaires (form IT-2332), petitioners took the position that each day worked by Mr. Rawn in New York for both employers was to be accounted for as a day worked for Pioneer Lands Corporation ("Pioneer") since on none of the twelve days that Mr. Rawn worked in New York for Pentagon Petroleum, Inc. ("Pentagon") did he work more than one hour for Pentagon, but worked substantially longer for Pioneer on each such day.

In accordance with 20 NYCRR 131.21, petitioners submitted as an alternative method of apportionment and allocation of Mr. Rawn's wage and salary income to New York State that each of the twelve days identified in the Form IT-2332 filed for Pentagon be treated as worked one-seventh for Pentagon and six-sevenths for Pioneer, for a total of 1.71 days ( $1/7 \times 12$ ) allocated to Pentagon. Mr. Rawn worked at least seven hours for Pioneer on each of the twelve days and, as reflected on the Form IT-2332 for Penatagon, on only two of the twelve days did he spend as much as one hour on Pentagon business. This was submitted as a fair and equitable apportionment and allocation.

2. Petitioners had duly executed a consent extending the period of limitation for assessment of personal income taxes and for credit or refund on their 1969 return to December 31, 1973.

3. On November 26, 1973, as the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1970, wherein

additional tax was found to be due. The loss sustained in the operation of aircraft was adjusted to the portion applicable to New York State and portions of income received from Pentagon in the amount of \$700,000.00 and \$15,000.00 respectively, were held to be attributable to New York State sources. Accordingly, the allocable percentage that was used in 1969 was applied (87.6 percent). A deficiency in the amount of \$91,514.46 plus interest was issued on the above date.

4. Petitioner Stanley R. Rawn, Jr. holds a Bachelor of Science degree and Master of Science degree from California Institute of Technology and is a corporate executive with experience in assessing the potential of, and negotiating the acquisition of, concessions for the development of oil and gas properties. During 1969, he rendered personal services as an employee of Pentagon, a Delaware corporation, on a part-time basis holding the title of president. Pentagon did not have an office during the years at issue and was an inactive corporation whose only assets consisted of cash and speculative investments in oil and gas properties. Such oil and gas properties consisted of licenses or concessions awarded by various foreign countries for the exploration and development of oil and gas deposits within a specified acreage of such countries. Mr. Rawn did not own any stock in Pentagon.

5. On twelve days during 1969, Stanley R. Rawn, Jr. attended meetings of Pentagon's Board of Directors held for the convenience of Pentagon's Directors at various locations in New York City. Such meetings were brief in duration usually lasting between ten and twenty minutes and involved housekeeping duties required by Pentagon's by-laws. On 19 days during 1969, Mr. Rawn in his capacity as president of Pentagon participated in sensitive negotiations conducted entirely outside New York in order to secure the approvals of foreign

governments necessary to permit Pentagon to transfer its interest in certain concessions and licenses. During 1969 petitioner Stanley R. Rawn, Jr. worked 224 days in service of Pioneer of which 213 full or substantially full days were worked in New York State.

6. During 1969, Stanley R. Rawn, Jr. received his normal annual salary of \$50,000.00 as compensation for personal services rendered as president of Pentagon.

7. During 1969, Stanley R. Rawn, Jr. also received a bonus of \$100,000.00 specifically identifiable as a reward for the extraordinary services in 1969 of negotiating the approvals for transfer of Pentagon's foreign exploration and development concessions.

8. During 1970, Stanley R. Rawn, Jr. performed no services for Pentagon. He received an additional bonus of \$715,000.00 specifically identifiable as a reward for the extraordinary services in 1969 of negotiating the approvals for transfer of Pentagon's foreign exploration and development concessions.

9. The \$100,000.00 and \$715,000.00 bonuses Stanley R. Rawn, Jr. received from Pentagon in 1969 and 1970, respectively, were paid for specific services rendered.

10. Petitioners concede the correctness of the determination regarding the aircraft loss.

11. Petitioner's nineteen proposed "Findings of Fact" are accepted as submitted.

#### CONCLUSIONS OF LAW

A. That Tax Law section 632(b)(1)(B) provides as follows:

"(b) Income and deductions from New York sources.  
(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to...(B) a business, trade, profession or occupation carried on in this state."

B. That 20 NYCRR 102.2(c) provides as follows:

"Rules for days within and without the State. In counting the number of days spent within and without this State, presence within the state for any part of a calendar day constitutes a day spent within the State..."

C. That 20 NYCRR 131.16 provides as follows:

"Earnings of nonresident employees and officers. If a nonresident employee (including corporate officers but excluding employees provided for in section 131.15) performs services for his employer both within and without the State, his income derived from New York sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to be the total number of working days employed both within and without the State."

D. That Pioneer and Pentagon were two separate and distinct entities.

Therefore, the proper apportionment method requires petitioners to apportion the total compensation received by Stanley R. Rawn, Jr. from Pentagon separately from the compensation received from Pioneer.

E. That the bonuses received by petitioner Stanley R. Rawn were for services rendered within and without the State.

F. That in counting the number of days within and without the State, presence within the State for any part of a calendar day by petitioner Stanley R. Rawn, Jr. constitutes a day spent within the State.

G. That petitioners' income derived from New York sources includes that proportion of Mr. Rawn's compensation for services rendered which the total number of working days employed within the State bears to be the total number



of working days employed both within and without the State. Therefore, such income is as follows:

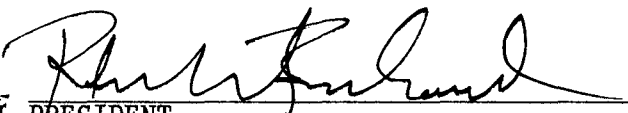
1969	-	12/31	x	150,000	=	58,065.00	New York Income from Pentagon
		213/224	x	43,333.26	=	41,372.00	New York Income from Pioneer
1970	-	12/31	x	715,000	=	276,774.00	New York Income from Pentagon

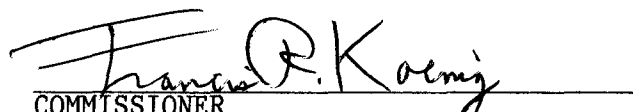
H. That the petition of Stanley R. Rawn, Jr. and Barbara A. Rawn is granted to the extent that the income tax for 1969 and 1970 be recomputed as per Conclusions of Law "D", "E", "F" and "G"; that the Audit Division is directed to recompute petitioners' claimed overpayment for 1969 and to modify the Notice of Deficiency issued November 26, 1973, together with appropriate interest credits and charges in accordance with this decision; and that, except as so granted the petitions are in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 04 1982

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER