

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Michael & Jeanne C. Sowiski	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
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 22nd day of October, 1982, he served the within notice of Decision by certified mail upon Michael & Jeanne C. Sowiski, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael & Jeanne C. Sowiski
36 Forest Hill Rd.
Pittsburgh, PA 15221

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
22nd day of October, 1982.

Bennie A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Jay Vredenburg

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

October 22, 1982

Michael & Jeanne C. Sowiski
36 Forest Hill Rd.
Pittsburgh, PA 15221

Dear Mr. & Mrs. Sowiski:

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

Taxing Bureau's Representative

STATE TAX COMMISSION

1. Petitioner, Michael Sowiski, filed, with his wife, a joint New York State Nonresident Return for 1973 on which he reported New York partnership income of \$4,623.00. Petitioners paid \$83.00 in New York State personal income tax on said return.

2. D.G. Sisterson and Company, a Pennsylvania partnership with a New York office engaged in accountancy, filed a New York State Partnership Return for the year 1973. The partnership had ordinary income of \$399,193.53 of which \$64,210.31 was derived from New York sources.

3. On April 14, 1977, the Audit Division issued a Statement of Audit Changes to the petitioners which contained the following explanation and recomputation of personal income tax.

Section 637(b) specifically states "no effect shall be given to a provision in the partnership agreement which allocates to the partner, as income or gain from sources outside New York, a greater portion of his distributive share of partnership income or gain from sources outside New York to partnership income or gain from all sources". Accordingly, your New York partnership income from the partnership D.G. Sisterson and Company is computed based on the partnership allocation percentage times your total distributive share.

COMPUTATIONS:

New York Partnership Income ($\$118,261.00 \times 16.085\%$)	\$19,022.00
Standard Deduction	<u>2,000.00</u>
Balance	\$17,022.00
Personal Exemptions ($\$1,300.00 \times 15.45\%$)	<u>201.00</u>
Taxable Income	\$16,821.00
 New York Tax on Income	 \$ 1,042.21
Less: Tax Previously Stated	
(Amount Reported on Return)	<u>83.00</u>
ADDITIONAL PERSONAL INCOME TAX DUE	<u>\$ 959.21</u>

Accordingly, a Notice of Deficiency was issued against the petitioners on April 14, 1977 asserting additional personal income tax of \$959.21, plus interest of \$215.62, for a total due of \$1,174.83.

4. D.G. Sisterson and Company is a small accounting firm having its main office in Pittsburgh, Pennsylvania and a small branch office in New York City to accommodate the needs of a few clients located there.

In 1973, the tax year in question, the Pittsburgh office consisted of four partners of which the petitioner Michael Sowiski was one. The partnership also had eight or ten salaried junior accountants and a full office staff of stenographic and clerical employees. In the year in question, the New York office consisted of one man, R.M. Davis, a New York resident who was a partner in the partnership.

The workpapers, tax returns, etc. generated by the New York partner are mailed to the Pittsburgh office for review and for all typing and processing. The New York partner and the Pittsburgh partners confer occasionally by phone and at times by meetings in New York which may include conferences with the New York clients. The New York office and the New York partner are not connected with and do not participate in the much larger bulk of the firm's accounting work. That large portion of the firm's accounting work has always been derived from and connected with Pittsburgh sources. This situation is recognized in the firm's partnership agreement which states that the New York partner shall receive no portion of the profits generated by the Pittsburgh office. The agreement further states that 20 percent of the New York office profits shall go to the Pittsburgh partners to be divided among them according to the stated percentages, with the remaining 80 percent of the New York profits to go to the New York partner as his total and only share of the total partnership income.

5. The partnership D.G. Sisterson and Company divided up the New York profits between the partners in the following manner:

Michael Sowiski (Pittsburgh Partner)	\$ 4,623.00
Other Pittsburgh Partners	8,219.00
R.M. Davis (New York Partner)	<u>51,368.00</u>
TOTAL NEW YORK PROFITS	<u>\$64,210.00</u>

6. The New York profits from the partnership was determined by the Audit Division in the following manner:

<u>PARTNERS</u>	<u>DISTRIBUTIVE SHARE</u>		<u>NEW YORK ALLOCATION PERCENTAGE</u>		<u>NEW YORK DISTRIBUTIVE SHARE</u>
Michael Sowiski (Pittsburgh Partner)	\$118,261.00	x	16.085	=	\$19,022.00
Other Pittsburgh Partners	229,565.00	x	16.085	=	36,925.00
R.M. Davis (N.Y. Partner)	51,368.00	x	16.085	=	8,263.00
TOTAL PARTNERSHIP PROFITS	<u>\$399,194.00</u>				
TOTAL NEW YORK PROFITS					<u>\$64,210.00</u>

Petitioners contend that it appears the Audit Division is attempting to tax an amount of the distributive shares greater than the total New York profits.

This can be seen based on the following schedule:

<u>PARTNERS</u>	<u>DISTRIBUTIVE SHARES TO BE TAXED</u>
Michael Sowiski (Pittsburgh Partner)	\$ 19,022.00
Other Pittsburgh Partners	36,925.00
R.M. Davis (New York Partner taxed on his total distributive share)	51,368.00
TOTAL DISTRIBUTIVE SHARES TO BE TAXED	<u>\$107,315.00</u>

The petitioners argue the State of New York may not tax as New York income an amount in excess of the total New York profits of the partnership. They further argue that in the present situation the state may not tax them on an income in excess of the actual amount received.

CONCLUSIONS OF LAW

A. That section 637 of the Tax Law (Nonresident partners) provides the following:

(a) Portion derived from New York sources.

(1) In determining New York adjusted gross income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with New York sources of such partner's distributive share of items of partnership income, gain, loss and deductions entering into his federal adjusted gross income, as such portion shall be determined under regulations of the tax commission consistent with the applicable rules of section six hundred thirty-two.

* * *

(b) Special rules as to New York sources. In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which --

(1) characterizes payments to the partner as being for services or for use of capital, or

(2) allocates to the partner, as income or gain from sources outside New York a greater portion 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, except as authorized in subsection (d), or

* * *

(d) Alternate methods. The tax commission may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with New York sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as it may require.

* * *

B. That section 134.2(b) Personal Income Tax Regulations provides the following:

(b) Likewise, except where authorized otherwise in accordance with section 134.4, no effect shall be given to a provision in the partnership agreement which allocates to the nonresident partner as income or gain from sources outside New York a greater portion 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. For example, if the total distributive share of a nonresident partner from all sources is \$5,000.00

and 60 percent of the partnership's income is from New York sources, the nonresident partner would be required to report on his New York nonresident return \$3,000.00 (60 percent of \$5,000.00) as his partnership distributive share, even though, under the partnership agreement, his share of the total New York income of the partnership may have been fixed at less than \$3,000.00.

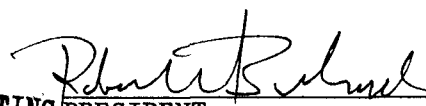
C. That Michael Sowiski's distributive share of partnership income for 1973 from the partnership of D.G. Sisterson and Company was correctly recomputed by the Audit Division.

D. That the petition of Michael Sowiski and Jeanne C. Sowiski is denied and the Notice of Deficiency issued April 14, 1977, is sustained.

DATED: Albany, New York

OCT 22 1982

STATE TAX COMMISSION



ACTING PRESIDENT



COMMISSIONER



COMMISSIONER