

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Thomas F. Tivnan
and Pamela A. Tivnan

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
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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Thomas F. Tivnan, and Pamela A. Tivnan the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas F. Tivnan
and Pamela A. Tivnan
63 Chestnut Ridge Rd.
Saddle River, NJ 07458

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
27th day of May, 1982.

Annie A. Huganur

Jay Vredenburg

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

May 27, 1982

Thomas F. Tivnan
and Pamela A. Tivnan
63 Chestnut Ridge Rd.
Saddle River, NJ 07458

Dear Mr. & Mrs. Tivnan:

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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
THOMAS F. TIVNAN AND PAMELA A. TIVNAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1975.

DECISION

Petitioners, Thomas F. Tivnan and Pamela A. Tivnan, 63 Chestnut Ridge Road, Saddle River, New Jersey 07458, 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 1975 (File No. 27483).

On January 21, 1982, petitioners advised the State Tax Commission, in writing, that they desired to waive a Formal Hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

I. Whether petitioner Thomas F. Tivnan's distributive share of partnership income from New York sources was properly determined.

II. Whether New York State income taxes imposed on nonresidents are discriminatory and in violation of the United States and New York State Constitutions.

FINDINGS OF FACT

1. Petitioners, Thomas F. Tivnan and Pamela Tivnan, filed a joint New York State income tax nonresident return for the year 1975.

2. On December 1, 1978, the Audit Division issued a Statement of Audit Changes to petitioners in the amount of \$3,617.14 in personal income tax plus interest of \$808.64, for a total sum of \$4,425.78. Said statement was issued

on the ground that petitioner Thomas F. Tivnan did not report his correct distributive share of partnership income from Parker, Duryee, Zunino, Malone & Carter, a New York law partnership which carried on business solely in this State. Accordingly, on April 10, 1979, a Notice of Deficiency was issued in the amount of \$3,617.14, plus interest.

3. Petitioners, on their nonresident return, allocated what they reported to be total federal income of \$31,999.06 on the basis of a ratio, the numerator of which was days worked in New York State (141) and the denominator of which was total days worked in year (201). The resultant figure of \$22,447.09 was considered total New York income. Petitioners then computed their New York itemized deduction by multiplying federal itemized deductions by the percentage that total New York income bore to federal income. Said percentage was then applied to petitioner's federal exemptions in arriving at New York exemptions.

4. The partnership return filed by Parker, Duryee, Zunino, Malone & Carter showed a distribution to petitioner Thomas F. Tivnan in the amount of \$47,887.01 and that his share of the New York City unincorporated business tax deduction was \$1,211.79. Said return did not show an allocation of business income to sources outside New York.

5. Petitioners contend that since they were not residents of New York for the year in issue, the tax, asserted together with interest, was discriminatory and in violation of the United States and New York State Constitutions.

CONCLUSIONS OF LAW

A. That 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 partnership income, gain, loss and deduction entering into his federal adjusted

gross income..." (section 637(a)(1) of the Tax Law). Therefore, since the firm of Parker, Duryee, Zunino, Malone & Carter carried on business solely within New York State, petitioner Thomas F. Tivnan cannot allocate his share of partnership income; also, an allocation of partnership income cannot be made on the basis of days spent within and without New York State (Matter of Thomas M. Debevoise et al. v. State Tax Commission, 52 A.D. 2d 1023, 383 N.Y.S. 2d 698).

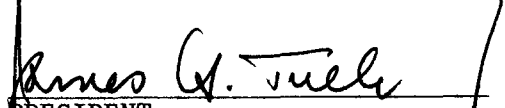
B. That there is no jurisdiction to determine issues of constitutionality at the administrative level of the State Tax Commission.

C. That the Audit Division is hereby directed to modify the Notice of Deficiency issued April 10, 1979, to the extent of recomputing New York itemized deductions based on the revised limitation percentage; and that, except as so granted, the petition is in all other respects denied.

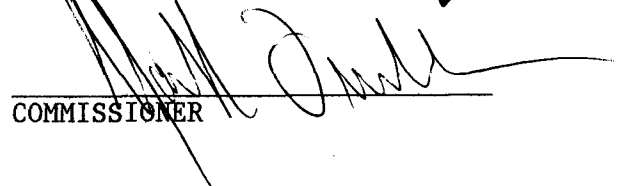
DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER