

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Irving P. Baumrind :
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. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Irving P. Baumrind, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

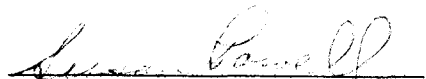
Irving P. Baumrind
1530 Palisade Ave.
Fort Lee, NJ 07024

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
28th day of September, 1983.





**AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174**

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

September 28, 1983

Irving P. Baumrind
1530 Palisade Ave.
Fort Lee, NJ 07024

Dear Mr. Baumrind:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IRVING P. BAUMRIND	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Irving P. Baumrind, 1530 Palisade Avenue, Fort Lee, New Jersey 07024, 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. 27091).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 3, 1983 at 1:15 P.M. Petitioner Irving P. Baumrind appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner's allocation of partnership income to sources within and without New York State was proper.

II. Whether the amount reported by petitioner as business income is derived from his participation in a New York partnership and therefore is to be allocated to this State in the same manner as the partnership income.

FINDINGS OF FACT

1. Petitioner, Irving P. Baumrind, a resident of New Jersey, filed a timely 1975 New York State Income Tax Nonresident Return wherein he reported business income earned as a "consultant" of \$18,902.00 and income from Federal

Schedule E, Form 1040, in the amount of \$61,552.00. Petitioner did not allocate any of his business income to sources within New York State. Petitioner allocated \$43,213.00 of the income from Federal Schedule E to New York State sources, based on days worked within and without this State.

2. On April 4, 1978, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held the business income of \$18,902.00 and the \$61,552.00 from Federal Schedule E were taxable to New York. The Statement of Audit Changes explained that the adjustments were being made as petitioner did not provide the information requested by the Audit Division concerning his allocation of the income reported on Federal Schedule E.

3. On April 5, 1979, a Notice of Deficiency was issued against petitioner, Irving P. Baumrind, asserting additional tax due in the amount of \$4,064.46, plus interest of \$852.89 for a total due of \$4,917.35.

4. During the year in issue, petitioner was a partner in the accounting firm of Maurice I. Sohn & Co. ("Sohn") located at 295 Madison Avenue, New York, New York 10017. During 1975, petitioner received a partnership distribution from Sohn in the amount of \$61,552.00. As noted in Finding of Fact "1", petitioner allocated \$43,213.00 of such distribution to New York State.

5. At the hearing, petitioner conceded that his partnership distribution from Sohn is fully taxable to New York as the partnership does not have a place of business outside New York State.

6. During 1975, petitioner received consulting fees from Wendell Fabrics Corporation ("Wendell") and Bentley Sales Corporation ("Bentley") in the amount of \$16,802.00 and \$2,100.00 respectively. Both corporations issued petitioner a Federal Form 1099, Statement for Recipients of Miscellaneous Income. Wendell

addressed its Form 1099 to petitioner in care of Sohn. Bentley addressed its Form 1099 to petitioner at his New Jersey residence.

7. Petitioner, in addition to being a partner with Sohn, was a tax and management consultant during 1975. He testified that "all services and fees rendered in that capacity (tax consultant) belong to myself, are reported by myself and the partnership has no claim whatsoever on that income". Petitioner's tax and management fees were not included in the partnership income of Sohn.

8. The consulting work which petitioner performed for the two corporations noted in Finding of Fact "6" was performed entirely outside the State of New York, either at his client's place of business or at his New Jersey home.

CONCLUSIONS OF LAW

A. That section 632 of the Tax Law provides that the New York adjusted gross income of a nonresident individual shall include, inter alia, partnership income derived from or connected with New York sources and income from a business, trade, profession or occupation carried on in this State.

B. That, inasmuch as petitioner conceded that his 1975 partnership distribution from Maurice I. Sohn & Co. is fully taxable to New York State, the Audit Division's disallowance of petitioner's allocation of his partnership distribution is sustained.


C. That the fees of \$18,902.00 received by petitioner during 1975 from his activities as a tax and management consultant were earned by petitioner as a result of his individual efforts and not from activities rendered as a partner of Maurice I. Sohn & Co. Furthermore, petitioner has established that his consulting activities were carried on entirely outside New York State. Accordingly, the income from such activities does not constitute New York source income.

D. That the petition of Irving P. Baumrind is granted to the extent indicated in Conclusion of Law "C"; that the Notice of Deficiency issued April 5, 1979 is to be modified accordingly; and that except as so modified, the Notice is sustained.

DATED: Albany, New York

SEP 28 1983

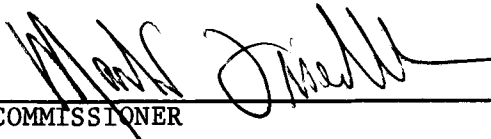
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER