

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William B. Kremens : 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 :
1973, 1974 & 1975.

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 William B. Kremens, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William B. Kremens
5 Saddlerock Court
Silver Spring, MD 20902

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

William B. Kremens
5 Saddlerock Court
Silver Spring, MD 20902

Dear Mr. Kremens:

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	:	
	:	
WILLIAM B. KREMENS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1973, 1974 and	:	
1975.	:	

Petitioner, William B. Kremens, 5 Saddlerock Court, Silver Spring, Maryland 20902, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973, 1974 and 1975 (File No. 23931).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 5, 1981 at 2:45 P.M. Petitioner William B. Kremens appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the petitioner's home in Maryland constituted a regular place of business of the partnership outside of New York State during said years.

II. Whether petitioner, a nonresident, is entitled to allocate his distributive share of partnership income for the years 1973, 1974 and 1975, as income for sources outside New York State.

FINDINGS OF FACT

1. Petitioner did not file New York State nonresident income tax returns for the years 1973 through 1975.

2. On March 15, 1978, the Audit Division issued a Statement of Audit Changes against petitioner, imposing income tax due for 1973, 1974 and 1975, on the grounds that based on prior years the full distributive share of income from Wardrop, Kremens & Jaffe was determined to be reportable for New York State tax purposes; therefore, distributive shares of income from such partnership for the years cited above are also deemed reportable in full for New York State tax purposes. Accordingly, the Audit Division issued a Notice of Deficiency to petitioner on April 4, 1978 asserting income tax of \$4,095.63, plus penalty of \$1,741.08 (pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law) and interest of \$1,078.73 for a total due of \$6,915.44.

3. From 1954 to 1962, the partnership of Wardrop, Kremens & Jaffe operated an accounting partnership which shared profits and losses equally. Subsequent to 1962, each partner collected his own fees from the clients which he serviced, with the exception of a few large clients whose fees they shared. Each partner's share of expenses was separately computed and each would contribute to the deficit, if any, of expenses in excess of their shared fees.

4. Effective March 1, 1968, the following amendments were made to the partnership agreement in anticipation of petitioner's moving to Maryland.

a. The firm was to continue operating as Wardrop, Kremens & Jaffe, but no expenses of the accounting office located in South Hempstead, New York, would be chargeable to petitioner, William B. Kremens, except for any direct expenses which he incurred.

b. The firm was to continue to file partnership income tax returns on the basis of a fiscal year ending January 31, and each partner was to be entitled to a copy of the partnership tax return.

c. William B. Kremens renounced all interest in any personal property located at the accounting office in South Hempstead.

d. Should any third party seek redress or obtain a money judgment arising out of any act in the practice of accounting, the partner who caused the wrongful act personally agreed to indemnify and to hold harmless the remaining two partners.

5. During 1968 petitioner's major client, Jim Swezey, Inc., relocated its office to the State of Maryland. Petitioner moved to Maryland so that he could service this major client. Petitioner also became an employee of this client, performing services which were not connected with partnership business. Partnership files relative to petitioner's clients, were removed from the New York office and relocated to his home office in Maryland. The petitioner further removed from the New York office furniture to relocate in his home office in Maryland. The petitioner did not hold himself out to the public because he had moved to Maryland just to service Jim Swezey, Inc. which took a majority of his time. The local New York clients previously serviced by petitioner were turned over to the remaining partners.

6. The vast majority of the income which was attributable to petitioner and reported on the New York State partnership return was from Jim Swezey, Inc., for accounting services rendered by him in Maryland. The remaining income came from tax preparation of a few clients which he had while working in New York and which he serviced from his home office in Maryland during the years at issue.

7. Petitioner was a New York State licensed certified public accountant with reciprocity in Maryland.

8. The managing partner, John W. Wardrop, Jr., prepared the partnership income tax returns from information furnished by the individual partners. Petitioner William B. Kremens submitted a list to the partnership of all the Maryland expenses which he paid and fees which he earned in Maryland. The net amount of these fees and expenses represented the petitioner's distributive share from the partnership. However, the New York partners had no obligations or responsibilities for expenses incurred by the petitioner. Nor did the New York partners have any rights or interest in the fees earned by the petitioner. The fees were deposited in his bank account in Maryland. None of Mr. Kremens' fees were deposited in the New York partnership account. The income of the partnership reflected the combined income and expenses of the individual partners, including petitioner's income and expenses from his Maryland sources.

9. The managing partner sent a copy of the Federal partnership income tax return to petitioner, but would not send a copy of the New York State partnership return since he assumed that petitioner would be filing the appropriate Maryland returns.

10. The petitioner contended that the Audit Division's reliance on the decision In the Matter of Edmund E. Harvey dated October 6, 1978 in his case is misplaced. He made this argument on the ground that Edmund E. Harvey received a guaranteed payment in one year and a percentage distribution from the partnership in the next year regardless of the profit or loss of the District of Columbia office whereas in his case the petitioner received no guarantees of income from the partnership since he renounced all interest of any fees earned by the partnership in New York. Petitioner therefore concluded that if he earned nothing in Maryland his income from the partnership would be nothing.

11. The petitioner argued that New York State is taxing his distributive share of the partnership income because of an erroneous tax filing by a partner of Wardrop, Kremens & Jaffe over whom he, petitioner, had no control. He also argued that when the managing partner filed the New York State partnership return, he failed to allocate income to the State of Maryland because the partnership is exempt from unincorporated business taxes.

12. The petitioner further argued that if in fact his home office did not constitute a regular place of business of the partnership during the years in question, then the partnership of Wardrop, Kremens & Jaffe could not have had a gross income from clients located in the State of Maryland, who were serviced from an office in Maryland, whose fees were deposit in a bank account in Maryland, and who did not have sites of any kind in the State of New York. Petitioner therefore reasoned that if New York State considered this income from the servicing of this Maryland client to be Wardrop, Kremens & Jaffee income, then it must necessarily follow that it was earned out of a Wardrop, Kremens & Jaffe office in Maryland.

13. Petitioner's Federal adjusted gross incomes for the years 1973, 1974 and 1975, were \$42,735.05, \$48,752.80 and \$76,111.95 respectively. His New York itemized deductions before the limitation percentage was applied were \$5,337.17, \$6,040.06 and \$7,225.06 for the years 1973, 1974 and 1975, respectively. Petitioner is also entitled to four exemptions for 1973 and 1975 and three exemptions for 1974.

14. On September 28, 1979, the New York State Tax Commission rendered a decision holding that petitioner's total distributive share of partnership income from Wardrop, Kremens & Jaffe for the years 1969 through 1972 was reportable to New York State.

CONCLUSIONS OF LAW

A. That petitioner moved to Maryland primarily to service a major client of Wardrop, Kremens & Jaffe. Neither petitioner nor the partnership held themselves out to the public as doing business from the office in petitioner's home. While the office may have been used by petitioner in performing some services on behalf of the partnership it did not constitute a regular place of business from which the partnership regularly and systematically carried on its affairs within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.10 and 131.1. (See Matter of the Petition of Ralph G. and Anna N. Thomson, S.T.C. January 24, 1979)

B. That the New York adjusted gross income of a nonresident partner includes his distributive share of all items of partnership income, gain, loss and deductions entering into his Federal adjusted gross income to the extent such items are derived from or connected with New York sources. [20 NYCRR 134.1(a)].

C. That since the partnership did not maintain an office outside New York State it had no basis upon which to allocate income to sources outside New York State and petitioner is not entitled to allocate his distributive share of partnership income. (Tremble 15 A.D. 2d 208).

D. That petitioner, William B. Kremens, had reasonable cause for failing to file New York State nonresident returns for 1973, 1974 and 1975; therefore, the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are waived.

E. That the petition of William B. Kremens is further granted to the extent of reducing his New York taxable income by allowing the proper New York itemized deductions and exemptions, in accordance with Finding of Fact "13".

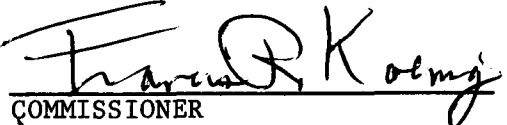
F. That the Audit Division is hereby directed to modify the Notice of Deficiency issued on March 15, 1978, to the extent indicated in Conclusions of Law "D" and "E"; and that except as so granted, the petition of William B. Kremens is in all other respects denied.

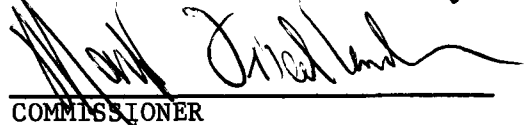
DATED: Albany, New York

SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER