

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leonard I. & Barbara E. Schreiber :
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. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Leonard I. & Barbara E. Schreiber, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonard I. & Barbara E. Schreiber
260 Hills Point Rd.
Westport, CT 06880

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
6th day of May, 1983.

David Parchuck

James A. Chapman

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leonard I. & Barbara E. Schreiber :
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. :

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Marshall Fineman the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marshall Fineman
David Berdon & Co.
415 Madison Ave.
New York, NY 10017

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
6th day of May, 1983.

David Parchuck

Annita G. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Leonard I. & Barbara E. Schreiber
260 Hills Point Rd.
Westport, CT 06880

Dear Mr. & Mrs. Schreiber:

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
Marshall Fineman
David Berdon & Co.
415 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LEONARD I. AND BARBARA E. SCHREIBER	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1973 and 1974.	:	

Petitioners, Leonard I. and Barbara E. Schreiber, 260 Hills Point Road, Westport, Connecticut 06880, 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 and 1974 (File No. 29063).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1982 at 1:15 P.M. Petitioners appeared by Marshall Fineman, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether an attorney admitted to practice in New York State and in no other, but whose residence is in the State of Connecticut, is entitled to an apportionment of his income from legal work performed in an office in his residence in determining his income tax liability as a nonresident.

FINDINGS OF FACT

1. Petitioners, Leonard I. and Barbara E. Schreiber, timely filed New York income tax nonresident returns for 1973 and 1974. Petitioner Leonard I. Schreiber allocated to New York State his business income using the statutory three factor method.

2. On January 30, 1980 the Audit Division issued a Notice of Deficiency against petitioners, Leonard I. and Barbara E. Schreiber in the amount of \$8,286.05 plus interest of \$3,386.13 for a total of \$11,672.18 for the years 1973 and 1974. A Revised Statement of Audit Changes issued October 26, 1979 explained that the deficiency was based on the determination that an office in petitioners' home in Connecticut was not a proper basis for allocation of income outside New York State. Petitioners executed timely consents for fixing the period of limitations upon assessment of personal income tax. The last consent executed extended the time for making an assessment to and including April 15, 1980.

3. Petitioner (all references to petitioner will refer to Leonard I. Schreiber only) during the years in issue was a resident of the State of Connecticut. He was, however, admitted to practice law in New York and maintained an office at 30 Park Avenue in New York City. Petitioner was also admitted to various Federal courts including the United States Supreme Court and the United States District Court for the District of Connecticut. Petitioner was not, however, admitted to practice law in Connecticut. His right to practice in the Federal courts was derived from his right to practice in the courts of New York State.

4. During the years in issue petitioner resided in a nine room house which he owned in Westport, Connecticut. He converted two of the rooms into an office arrangement consisting of a private office with a desk, bookshelves, telephone, calculator, stationery and a file cabinet, and a reception room with seats for clients, a work table for petitioner's secretary, a typewriter, bookshelves, a telephone and file space. There was an entrance into this office area separate from the rest of the house.

5. Petitioner employed his wife, at a salary, as his full-time secretary in the office at his home. He also employed a part-time secretary in his office in New York City.

6. Petitioner was unsure of the precise amount of time he spent in either his New York office or the office in his home but he approximated that half his office time was spent in each place. In New York petitioner met with clients and prepared correspondence. Petitioner prepared pleadings, briefs and other detailed legal paper work in his office at home. Some of petitioner's clients indicated by affidavit that, because of the clients' residences in Westchester County, New York, it was more convenient to meet with petitioner at the office in his home than at his New York City office. It was also more convenient for petitioner to work at home since, as he testified, there were fewer distractions at his office at home than in the New York office.

7. None of the work which petitioner performed for any one client was done exclusively in Connecticut. Part of the work for each client, including consultations and paperwork, was done in New York City. Bills for services rendered were issued from both New York and Connecticut; however, all payments were made to the New York office where a single account was maintained. Petitioner also indicated that none of his professional stationery listed him as an attorney-at-law in Connecticut during this period. In the New York City telephone directory petitioner was listed as an attorney, however, he was not so listed in the Westport, Connecticut telephone directory at that time.

8. For the taxable years 1973 and 1974 petitioner claimed an expense deduction for the office in his home on his Federal Income Tax Return. The Internal Revenue Service examined petitioner's returns for both of the aforesaid

years and determined that the deduction for the office in petitioner's home was a valid business expense.

9. Petitioner apportioned the time spent in both New York and Connecticut and only paid tax on that portion of his income derived from time spent in the New York office on the ground that he was carrying on his profession partly within and partly without New York State.

10. Included in petitioners' brief were proposed findings of fact, all of which have been incorporated into this decision with the exception of proposed findings nine and twelve which were deemed immaterial and unnecessary for the decision in this case.

CONCLUSIONS OF LAW

A. That section 632(b)(1)(B) of the Tax Law, in pertinent part, includes within the New York adjusted gross income of a nonresident individual, items of income derived from or connected with New York sources attributable to a profession carried on in New York State. Section 632(c) allows items of income from a profession carried on partly within and partly without New York to be apportioned and allocated.

B. That under Connecticut law no person not duly admitted to the Connecticut bar may practice law, solicit employment for a lawyer or hold himself out to the public as being a lawyer (Conn. Gen. Stat., section 51-88). Petitioner, therefore, could not practice law in Connecticut as that term is usually understood.

C. That "[p]etitioner's right to perform legal services in places other than in the State of New York [was] primarily based entirely on the fact that he [was] admitted to practice law in this State...[He] could lawfully hold himself out as only entitled to practice law in the State of New York, and

services performed elsewhere were incidental to the practice he maintained in this State" (Carpenter v. Chapman, 276 A.D. 634).

D. That "[t]he practice of law is quite a different activity from that of ordinary business" (Carpenter, supra at 636). Petitioner was not practicing law in two different states; he was practicing law in New York only and performing various services in connection with this practice in an out-of-state location. The fact that petitioner had an office in his home which was acceptable to the Internal Revenue Service as a valid business expense is irrelevant to the issue of whether petitioner was practicing law in two states. Since petitioner could not practice law in Connecticut, all of his business was derived from his New York practice regardless of where the services were performed. Thus all his income was derived from the New York practice which was a New York source within the meaning and intent of section 632(b)(1)(B) of the Tax Law.

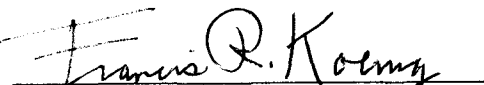
E. That the petition of Leonard I. and Barbara E. Schreiber is denied and the Notice of Deficiency issued January 30, 1980 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER