

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Marc & Judith Joseph : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS Personal :
Income Tax under Article 22 of the Tax Law for the :
Years 1973 - 1978 and NYC Nonresident Earnings Tax :
under Chapter 46, Title U of the Administrative :
Code of the City of New York for the Years 1976 :
through 1978. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of January, 1984, he served the within notice of Decision by certified mail upon Marc & Judith Joseph, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marc & Judith Joseph
25 Karens Ln.
Englewood Cliffs, NJ 07632

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of January, 1984.





Authorized to administer oaths

pursuant to Tax Law section 174

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

January 20, 1984

Marc & Judith Joseph
25 Karens Ln.
Englewood Cliffs, NJ 07632

Dear Mr. & Mrs. Joseph:

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 & 1312 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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 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	:	
MARC and JUDITH JOSEPH	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law for the Years	:	
1973 through 1978 and New York City Nonresident	:	
Earnings Tax under Chapter 46, Title U of the	:	
Administrative Code of the City of New York for	:	
the Years 1976 through 1978.	:	

Petitioners, Marc and Judith Joseph, 25 Karens Lane, Englewood Cliffs, New Jersey 07632, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1973 through 1978 and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1976 through 1978. (File Nos. 22648, 29467, 29504 and 37017).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 28, 1983 with all briefs to be submitted on or before June 9, 1983. Petitioner Marc Joseph appeared pro se, and for his wife, petitioner Judith Joseph. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the asserted deficiencies of personal income tax and nonresident earnings tax violate the Constitutions of the United States and the State of New York.

II. Whether the asserted deficiencies of personal income tax and nonresident earnings tax are barred by the statute of limitations.

III. Whether petitioners properly reported the amount of their income subject to tax.

FINDINGS OF FACT

1. Petitioners filed separately on nonresident New York State combined income tax returns for the years 1973 and 1974. They filed joint New York State income tax nonresident returns for the years 1975 through 1978. Marc Joseph also filed New York City nonresident earnings tax returns for the years 1976 through 1978. On each return, Mr. Joseph reported as New York State and/or New York City income, the amount of income reported as distributed to him from New York sources by the law firm of Stein, Rosen & Ohrenstein.

2. On January 3, 1977, Mr. Joseph executed a Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes. The document extended the period for the assertion of a deficiency of personal income tax for the taxable year ended December 31, 1973 until on or before April 15, 1978.

3. The Audit Division issued Notices of Deficiency to petitioners which asserted deficiencies of tax as follows:

Year(s):	1973-1975	1976	1977	1978
Date Issued:	4/14/78	3/3/80	1/30/80	4/14/82
Type of Tax:	NYS	NYS & NYC	NYS & NYC	NYS & NYC
Amount of Tax:	\$6,159.86	\$661.01	\$1,166.12	\$1,908.13
Amount of Interest:	\$1,542.04	\$161.92	\$177.58	\$559.62

4. In each instance, the Notice of Deficiency was premised upon attributing to Mr. Joseph his proportionate distributive share of New York partnership income which was reported by the New York law firm of Stein, Rosen & Ohrenstein.

The allocation percentage used to arrive at Mr. Joseph's distributive share was computed on the basis of an audit of the law firm's partnership returns.

5. The New York law firm of Stein, Rosen & Ohrenstein filed New York State Partnership Returns for the fiscal years ending January 31, 1974 through January 31, 1978. On each return, the law firm reported that it had offices in both New York and New Jersey and attributed a certain portion of its income to New Jersey. The firm then prorated, between New York and New Jersey, the income earned by all but one of the nonresident partners. The firm did not attribute any income to New York for one partner who reportedly performed services only in New Jersey. Similarly, the law firm did not ascribe any New Jersey income to the New York resident partners. The partnership did not utilize a partnership allocation percentage to determine the amount of income which its nonresident partners were to report to New York.

6. Mr. Joseph is an attorney-at-law who, during the periods in issue, was licensed to practice in both New York and New Jersey.

7. During the periods in issue, Mr. Joseph was a member of a New Jersey law firm. From 1973 through 1975 the name of the law firm was Stein and Rosen. In 1975, Mr. Joseph's name was added to the name of the law firm and it was thereafter known as Stein, Joseph & Rosen.

8. Throughout the periods in issue, Mr. Joseph was a partner of the New York law firm of Stein, Rosen & Ohrenstein.

9. The partners of the New Jersey law firm were not identical to the partners of the New York law firm. However, there were individuals who were partners of both firms.

10. It was Mr. Joseph's interpretation of the rules and regulations of the Supreme Court of the State of New Jersey that a New Jersey licensed attorney is

prohibited from sharing fees earned on New Jersey matters with out-of-state counsel without application to and approval by a New Jersey court. In order to comply with these requirements, the two law firms hired the same accounting firm to maintain separate accounting records for each law firm. Then records reflected separate assets, expenses, payables and receivables. In addition, each law firm maintained its own bank account.

11. The New Jersey law firm filed New Jersey partnership returns during the periods in issue.

12. When Mr. Joseph discovered that the accountant who prepared the New York partnership returns was filing as if there was one New York law firm with a New Jersey office, he instructed the accountant to thenceforth change the filing method to reflect two distinct partnerships.

CONCLUSIONS OF LAW

A. That the laws of the State of New York and the City of New York are presumed to be constitutionally valid at the administrative level of the New York State Tax Commission.

B. That, in general, a deficiency of New York Personal Income Tax must be asserted within three years after a return is filed [Tax Law §683(a)]. If a return for a period ending within a calendar year is filed before April fifteenth of the succeeding calendar year, the return is deemed filed on April fifteenth of the succeeding calendar year [Tax Law §683(b)(1)]. However, when a taxpayer has agreed to an extension of time, a deficiency may be asserted at any time prior to the expiration of time agreed upon [Tax Law §683(c)(2)]. The limitation on the assertion of a deficiency of New York City nonresident earnings tax is determined in the same manner (Administrative Code of the City of New York §U46-33.0).

C. That, with the exception of the asserted deficiency of New York State Personal Income Tax for the year 1973, all of the deficiencies were asserted within the three year statute of limitations [Tax Law §683(a); Administrative Code of the City of New York §U46-33.0(a)]. The deficiency asserted for the year 1973 is not barred by the statute of limitations because of the consent mentioned in Finding of Fact "2" [Tax Law §683(c)(2)].¹

D. That section 632(a)(1)(A) of the Tax Law provides, in substance, that the New York adjusted gross income of a nonresident individual shall include his distributive share of partnership income, gain, loss and deduction from New York sources as determined by section 637 of the Tax Law. The income subject to New York City nonresident earnings tax is computed in the same manner [Administrative Code of the City of New York §U46-1.0(f) and §U46-4.0(a)].

E. That in view of the uncontradicted testimony presented herein, the additional partnership income which the Audit Division attributed to Mr. and Mrs. Joseph through an allocation percentage was not a distribution of New York partnership income. Rather, it represented payment for services rendered on behalf of a New Jersey law firm on New Jersey matters. Accordingly, this income was not subject to New York State personal income tax or New York City nonresident earnings tax.

F. That the petition of Marc and Judith Joseph is granted.

DATED: Albany, New York

JAN 20 1984

STATE TAX COMMISSION

Rodwin C. Cline
PRESIDENT

Francis R. Kaenig
COMMISSIONER

Mark J. Jurek
COMMISSIONER

¹ It is noted that since a separate return was filed for 1973, a deficiency should not have been asserted against Mrs. Joseph for this year.