

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of

Anthony J. & Marylin D. McNulty :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law and New York City Nonresident Earnings Tax :  
under Chapter 46, Title U of the Administrative :  
Code of the City of New York for the Year 1979. :

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 31st day of July, 1984, he served the within notice of Decision by certified mail upon Anthony J. & Marylin D. McNulty, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony J. & Marylin D. McNulty  
3 Landing Lane  
Princeton Junction, NJ 08550

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  
31st day of July, 1984.

David Parchuck

James A. Hagan  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 31, 1984

Anthony J. & Marylin D. McNulty  
3 Landing Lane  
Princeton Junction, NJ 08550

Dear Mr. & Mrs. McNulty:

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 and Chapter 46, Title U of the Administrative Code of the City of New York, 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 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	:	
	:	
ANTHONY J. McNULTY AND MARYLIN D. McNULTY	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and New York City Nonresident	:	
Earnings Tax under Chapter 46, Title U of the	:	
Administrative Code of the City of New York for	:	
the Year 1979.	:	

---

Petitioners, Anthony J. McNulty and Marylin D. McNulty, 3 Landing Lane, Princeton Junction, New Jersey 08550, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1979 (File No. 35769).

On October 20, 1983, petitioners waived a small claims hearing before the State Tax Commission and requested the Commission to render its decision, based on the Department of Taxation and Finance file as presently constituted and petitioners' brief submitted on March 21, 1984.

#### ISSUES

I. Whether the Audit Division properly required petitioners to include in the computation of taxable income for their nonresident period the entire amount of Mr. McNulty's distributive share of partnership income from McNulty & McNulty.

II. Whether the Audit Division properly required petitioners to prorate their itemized deduction and personal exemptions to their resident and nonresident periods.

FINDINGS OF FACT

1. The relevant facts are not in dispute. On August 20, 1979, petitioners, Anthony J. McNulty and Marylin D. McNulty, changed their residence from 3 Daytona Beach Place, Coram, New York to 110 Sunnybrook Road, Cherry Hill, New Jersey.

2. Mr. McNulty is a partner in the law firm of McNulty & McNulty, the office of which is located at 370 Lexington Avenue, New York, New York. His distributive share of the partnership income constituted petitioners' principal source of income in 1979.

3. For the year 1979, petitioners filed two New York State joint income tax returns (with New York City nonresident earnings tax): a resident return for the period January through August; and a nonresident return, indicating their address as 197 Dorchester Drive, East Windsor, New Jersey, for the remainder of the year. Salient portions of their computations of taxable income, for the resident and nonresident periods, are shown below.

	<u>RESIDENT PERIOD</u>	<u>NONRESIDENT PERIOD (NYS AMOUNTS)</u>
Total N.Y. income	\$24,500.50	\$12,250.25
N.Y. itemized deduction	(8,340.06)	(4,170.00)
Exemptions	(1,866.68)	(933.32)
N.Y. taxable income	<u>\$14,293.76</u>	<u>\$ 7,146.93</u>

Petitioners prorated their income, itemized deduction and exemptions, two-thirds to the resident period and one-third to the nonresident period.

4. On August 18, 1981, the Audit Division issued to petitioners a Statement of Audit Changes, proposing additional personal income tax under Article 22 of the Tax Law and additional nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York in the respective amounts of \$2,435.79 and \$58.59, plus interest. This proposed liability resulted from including the entire amount of Mr. McNulty's distributive share of partnership

income (\$45,803.00) in the computation of petitioners' New York taxable income for the nonresident period, since the taxable year of the partnership ended on December 31, 1979.

Partnership income	\$45,803.00
Adjustment	(595.00)
N.Y. income	\$45,208.00
N.Y. itemized deduction	(4,170.00)
Balance	\$41,038.00
Exemptions	(933.00)
N.Y. taxable income	\$40,105.00

On September 10, 1981, the Audit Division issued to petitioners a Notice of Deficiency, asserting additional personal income tax and nonresident earnings tax in the amounts as previously shown in the Statement of Audit Changes.

5. Petitioners contest the effective disallowance of their itemized deduction to the extent of \$8,340.06 and of their personal exemptions to the extent of \$1,866.68; these partial disallowances result from petitioners' having accrued no income during their resident period from which the deduction and exemptions could be subtracted.

6. Petitioners filed a State of New Jersey Gross Income Tax Resident Return for the year 1979, computing and remitting tax of \$196.07.

#### CONCLUSIONS OF LAW

A. That regulation section 148.6 (20 NYCRR 148.6), the validity of which was considered and sustained in Matter of Kritzik v. Gallman (41 A.D.2d 994 [3d Dept. 1973]), provides that when a partner changes his status from New York resident to nonresident, his distributive share of partnership gain or loss is includible in the computation of his taxable income for that portion of his taxable year in which the taxable year of the partnership ends. See also Matter of Thomas F. Noone and Mary Jane Noone, State Tax Comm., July 3, 1981; Internal Revenue Code section 706. Therefore, the Audit Division properly

required petitioners to include Mr. McNulty's distributive share of income from the New York partnership McNulty & McNulty in the calculation of their taxable income for the nonresident period (September through December, 1979), inasmuch as the partnership's taxable year terminated on December 31, 1979.

B. That in accordance with Tax Law section 654(b) and (e), petitioners properly prorated their itemized deduction and personal exemptions to their resident and nonresident periods. Without specific evidence establishing when the personal expenses comprising the itemized deduction were actually paid, it is reasonable to assume such expenses were paid proportionally each month throughout the year. Petitioners offered no proof to show that they paid more than \$4,170.00 in expenses subsequent to August, 1979. We recognize that this proration, taken together with inclusion of Mr. McNulty's entire distributive share of partnership income in petitioners' taxable income for the nonresident period, causes them to lose any tax benefit they might derive from \$8,340.06 of itemized deductions and \$1,866.68 of personal exemptions attributable to the resident period; there is no basis, however, in the facts presented or in the law to conclude otherwise.


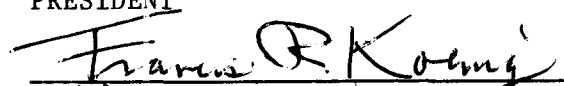
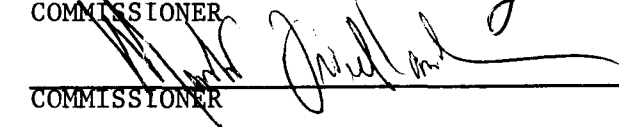
C. That the Administrative Code of the City of New York Chapter 46, Title U section U46-2.0(a)(1) imposes tax on the net earnings from self-employment within the City of the nonresident individual. The foregoing conclusions similarly apply to the calculation of petitioners' nonresident earnings tax.

D. That the petition of Anthony J. McNulty and Marilyn D. McNulty is hereby denied, and the Notice of Deficiency issued on September 10, 1981 is sustained.

DATED: Albany, New York

JUL 31 1984

STATE TAX COMMISSION

  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER