

STATE TAX COMMISSION

Carrie Rodriguez
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Lawrence T. Warble
11 Northway
Bronxville, NY 10708

Dear Mr. Warble:

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, 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	:	
LAWRENCE T. WARBLE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1978.	:	

Petitioner, Lawrence T. Warble, 11 Northway, Bronxville, New York 10708, 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 1978. (File No. 37177).

On October 17, 1983 petitioner, Lawrence T. Warble, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based upon the entire record contained in the file. After due consideration of said record, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner is allowed to include in his personal service income his distributive share of New York City and District of Columbia unincorporated business taxes in determining his New York net personal service income.

FINDINGS OF FACT

1. Petitioner, Lawrence T. Warble, and his wife timely filed a 1978 New York State Income Tax Resident Return. On said return they computed their personal income tax separately. Petitioner in computing his personal income tax utilized form IT-250, New York State Maximum Tax on Personal Service Income. On said form he listed partnership income of \$119,093.00, New York

City Unincorporated Business Tax of \$5,670.00 and District of Columbia Unincorporated Business Tax of \$182.00 as personal service income. He listed payment to qualified retirement plan (H.R.10) of \$7,500.00 as a deduction against personal service income resulting in personal service net income of \$117,445.00. He also claimed as a resident tax credit the \$182.00 District of Columbia Unincorporated Business Tax.

2. On August 8, 1980 the Audit Division issued to petitioner a Statement of Audit Changes which stated in pertinent part that:

"Resident Credit is allowable only for Personal Income Tax (not Unincorporated Business Tax) paid to District Of Columbia. Therefore, the \$182.00 resident credit shown on your 1978 New York Return has been disallowed."

"On Form IT-250, Unincorporated Business Taxes are not considered Personal Service Income..."

On November 11, 1981 the Audit Division issued to petitioner a Notice of Deficiency asserting additional tax due of \$254.13 plus interest of \$57.84 for a total due of \$311.97.

3. At a tax conference held on June 8, 1983, petitioner agreed to that portion of the Notice of Deficiency attributable to the disallowance of the resident tax credit. However, he disagreed to the disallowance of the unincorporated business taxes as part of his personal service income.

4. Petitioner, Lawrence T. Warble, is a partner of Breed, Abbott and Morgan (the partnership). He reported his distributive share of the partnership's net income on his New York income tax return. Pursuant to section 612(b)(3) of the Tax Law, he also increased his federal adjusted gross income on his New York income tax return by his distributive share of New York City and District of Columbia unincorporated business taxes. Said taxes were deducted by the partnership in computing the partnership's net income.

CONCLUSIONS OF LAW

A. That section 603-A(b)(1) of the Tax Law, as it applied to the year in issue, defines New York personal service income, in pertinent part, as items of income includible as personal service income for purposes of section 1348 of the Internal Revenue Code, to the extent such items of income are includible in New York adjusted gross income.

B. That section 603-A(c) of the Tax Law provides for a definition of New York personal service net income as New York personal service income reduced by any deductions allowable under section 62 of the Internal Revenue Code which are properly allocable to or chargeable against such New York personal service income. The deductions for New York City and District of Columbia unincorporated business taxes are allowable under section 62 of the Internal Revenue Code and are, therefore, properly chargeable against petitioner's New York personal service income.

C. That section 603-A(b)(1) of the Tax Law does not provide for the modification required pursuant to section 612(b)(3) to be included in New York personal service income. The intent of the Legislature with regard to this matter is shown in the Laws of 1980, Chapter 417, Section 34, wherein New York personal service income was redefined to include the amount of the modifications which must be added to federal adjusted gross income pursuant to section 612(b) paragraphs (7), (8) and (9) of the Tax Law as personal service income. This change was applicable to taxable years beginning on or after January 1, 1978. No other modifications which are required to be added to federal adjusted gross income have been included in the definition of personal service income. Therefore, the modification required pursuant to section 612(b)(3) of the Tax Law can not be included in New York personal service income.

D. That the petition of Lawrence T. Warble is denied and the Notice of Deficiency dated November 11, 1981 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984


PRESIDENT


COMMISSIONER


COMMISSIONER