

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of  
Eugene W., Jr. & Marcia H. Goodwillie : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for Refund :  
of NYS Personal Income Tax under Article 22 of the :  
Tax Law and NYC Nonresident Earnings Tax under :  
Chapter 46, Title U of the Administrative Code of :  
The City of New York for the Year 1978. :

---

State of New York :

ss.:

County of Albany :

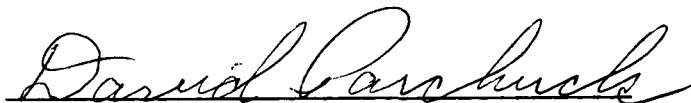
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of February, 1985, he served the within notice of Decision by certified mail upon Eugene W., Jr. & Marcia H. Goodwillie, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

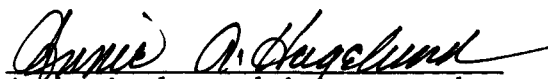
Eugene W., Jr. & Marcia H. Goodwillie  
304 Highland Ave.  
Upper Montclair, NJ 07043

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  
6th day of February, 1985.





Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of  
Eugene W., Jr. & Marcia H. Goodwillie : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for Refund :  
of NYS Personal Income Tax under Article 22 of the :  
Tax Law and NYC Nonresident Earnings Tax under :  
Chapter 46, Title U of the Administrative Code of :  
The City of New York for the Year 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 6th day of February, 1985, he served the within notice of Decision by certified mail upon David Sachs, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Sachs  
White & Case  
14 Wall Street  
New York, NY 10005

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 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 February, 1985.

David Parchuck

Annie A. Hargrave

Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 6, 1985

Eugene W., Jr. & Marcia H. Goodwillie  
304 Highland Ave.  
Upper Montclair, NJ 07043

Dear Mr. & Mrs. Goodwillie:

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 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: Petitioner's Representative  
David Sachs  
White & Case  
14 Wall Street  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition

of

EUGENE W. GOODWILLIE, JR. AND MARCIA H. GOODWILLIE

DECISION

for Redetermination of a Deficiency or for Refund  
of New York State 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 1978.

---

Petitioners, Eugene W. Goodwillie, Jr. and Marcia H. Goodwillie, 304 Highland Avenue, Upper Montclair, New Jersey 07043, 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 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 1978 (File No. 38595).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 10, 1984 at 9:15 A.M., with all briefs to be submitted by June 10, 1984. Petitioners appeared by David Sachs, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly treated amounts designated as a "foreign living allowance" and a "foreign education allowance", received by petitioner Eugene W. Goodwillie, Jr., a non-resident partner of a New York partnership, as part of his distributive share and accordingly taxable to New York based on the partnership's New York allocation percentage.

II. Whether section 637 of the Tax Law is constitutional.

FINDINGS OF FACT

1. Petitioners, Eugene W. Goodwillie, Jr. and Marcia H. Goodwillie, filed a joint New York State Income Tax Nonresident Return for the year 1978 whereon Eugene W. Goodwillie, Jr. (hereinafter "petitioner") reported New York State partnership income of \$70,893.00. His partnership income reported for Federal purposes was \$104,091.00. All of petitioner's partnership income was derived from the New York law partnership, White & Case. Petitioner also filed a 1978 Nonresident Earnings Tax Return For The City of New York whereon he reported partnership income for New York City purposes of \$70,163.00.

2. During 1978, petitioner was the partner in charge of the London, England office of White & Case ("the partnership"). He received a total of \$119,091.00 from the partnership during said year which was comprised of the following:

<u>Nature of Payment</u>	<u>Amount</u>
Distributive share	\$ 73,953.00
Guaranteed foreign salary	33,000.00
Foreign living allowance	9,534.00
Foreign education allowance	2,545.00
Other income <sup>1</sup>	59.00
Total	<u>\$119,091.00</u>

3. The portion of petitioner's total partnership income allocated to New York State was computed on his return by adding the portion of his distributive share attributable to New York sources as "advised by partnership" of \$67,001.00, the portion of his total guaranteed foreign salary, foreign living allowance and foreign education allowance determined by him to be attributable to New York sources based on days worked within and without the State of \$3,833.00,

---

<sup>1</sup> No description was provided for this "other income".

and the "other income" of \$59.00, for a total of \$70,893.00. The portion of petitioner's total partnership income allocated to New York City was computed in a similar fashion.

4. On February 23, 1982, the Audit Division issued a Statement of Audit Changes wherein it was explained that:

"The income from a partnership for a nonresident partner is determined from the activities of the partnership and not the partners activities.

A nonresident member of a partnership doing business within and without the State must report his allocated New York distributive share as determined by the partnership. The partnership of White and Case determined that of your total distributive share 90.60% is from New York sources.

Accordingly, the method you used in allocating your distributive share from the partnership of White and Case is not permissible pursuant to our Tax Law.

	<u>Federal</u>	<u>Allocation Percentage</u>	<u>State</u>
Distribution of Partnership Income	\$119,091.00	90.60%	\$107,896.44

However, since your Federal distributive share less the Section 911 exclusion (\$119,091.00 - \$15,000.00 = \$104,091.00) is less than the New York distributive share, the amount includable in your New York adjusted gross income, as far as your partnership income is concerned is the Federal amount which is in accordance with Federal conformity."

Accordingly, on June 4, 1982, the Audit Division issued a Notice of Deficiency against petitioner and his wife asserting additional New York State personal income tax of \$3,645.00, additional New York City nonresident earnings tax of \$220.59, plus interest of \$1,186.65, for a total due of \$5,052.24.

5. During the hearing held herein, petitioner conceded that his guaranteed foreign salary of \$33,000.00 is properly allocable to New York State and New York City on the same basis as his distributive share from the partnership. However, he argued that the partnership income received as a foreign living allowance (\$9,534.00) and a foreign education allowance (\$2,545.00) should not

be held allocable to New York State and City on the same basis as his distributive share since said allowances merely represented reimbursements for the excess of expenses incurred in living in London, England over those which would have been incurred by petitioner in New York.

6. The foreign living allowance paid to petitioner during 1978 was determined based on the tables and reports prepared by Organization Resources Counselors, Inc., a private organization which specializes in providing cost of living information on a comparative basis between locations in the United States and locations abroad. The foreign education allowance paid to petitioner during 1978 was paid against presentation of invoices from private schools in England in which petitioner's two sons were enrolled. The purpose of such allowance was to allow foreign partners to enroll their children in schools having a curriculum close to that which is provided in schools in the United States.

7. Petitioner further argued that said allowances should properly be deducted from his gross partnership income before application of the New York allocation percentage since they were payable regardless of the partnership's profit or loss, bore no relationship to the amount of his distributive share, and were payable only to partners assigned to the partnership's foreign offices in the amounts which vary according to place of residence abroad, without regard to the recipient's percentage of interest in the partnership.

8. The Audit Division, in its Answer of December 30, 1983, conceded that petitioner's total partnership income of \$119,091.00 should properly be reduced by the Internal Revenue Code section 911 exclusion of \$15,000.00, prior to application of the New York allocation percentage. Accordingly, based on the

above, the tax deficiency was reduced from \$3,865.59 to \$2,684.54 pursuant to a recomputation contained in said Answer.

9. Petitioner argued that any interpretation of section 637 of the Tax Law, which allocates his foreign living allowance and foreign education allowance to New York, is unconstitutional.

#### CONCLUSIONS OF LAW

A. That section 637(a)(1) of the Tax Law provides, in pertinent part, that:

"In determining New York adjusted gross income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with New York sources of such partner's distributive share of items of partnership income, gain, loss and deduction entering into his federal adjusted gross income..."

B. That since petitioner was a partner in the law partnership, White & Case, all payments by the partnership to him must be treated as distributions of partnership income. (Petition of Andrew J. and Jacqueline Connelly, State Tax Commission, January 20, 1984.) Accordingly, the payments received by petitioner, which were characterized as a foreign living allowance and a foreign education allowance, constituted part of his distributive share of partnership income.

C. That section 637(b) of the Tax Law provides, in pertinent part, that:

"In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which --

\* \* \*

(2) allocates to the partner, as income or gain from sources outside New York, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside New York to partnership income or gain from all sources, except as authorized in subsection (d)..."



D. That the payments received by petitioner from the partnership, which were characterized as a foreign living allowance and a foreign education allowance, are deemed to be derived from a New York source to the extent of the partnership's New York allocation percentage of 90.60 percent.

E. That for New York City nonresident earnings tax purposes, petitioner's 1978 net earnings from self-employment was \$94,306.00, determined as follows:

Partnership Income	\$119,091.00
Less: Section 911 Exclusion	<u>15,000.00</u>
Balance	\$104,091.00
New York Allocation Percentage	x 90.60%
New York Partnership Income	<u>\$ 94,306.00</u>

F. That section 637 of the Tax Law is presumed to be constitutionally valid at the administrative level of the New York State Tax Commission.

G. That the petition of Eugene W. Goodwillie, Jr. and Marcia H. Goodwillie is granted to the extent conceded by the Audit Division (see Finding of Fact "8", supra) and except as so granted, said petition is, in all other respects, denied.

H. That the Notice of Deficiency dated June 4, 1982 is sustained in the reduced amount of \$2,684.54 (see Finding of Fact "8", supra), together with such interest as may lawfully be owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985

Rudolph A. Allen  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. [Signature]  
COMMISSIONER