

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
John M. Johnston :

: AFFIDAVIT OF MAILING

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 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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon John M. Johnston, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John M. Johnston
c/o Sheehan & Co.
233 Broadway
New York, NY 10007

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
3rd day of October, 1985.

David Parchuck

Annunzio D. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
John M. Johnston :

: AFFIDAVIT OF MAILING

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 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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Kevin J. Ryan, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kevin J. Ryan
Sheehan & Company
233 Broadway
New York, NY 10007

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
3rd day of October, 1985.

David Parchuck

William A. Haggard
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 3, 1985

John M. Johnston
c/o Sheehan & Co.
233 Broadway
New York, NY 10007

Dear Mr. Johnston:

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
Kevin J. Ryan
Sheehan & Company
233 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN M. JOHNSTON	:	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 1979.	:	

Petitioner, John M. Johnston, c/o Sheehan & Co., 233 Broadway, New York, New York 10007, 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 1979 (File No. 45376).

A 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 April 26, 1985 at 10:30 A.M. with all briefs to be submitted by May 26, 1985. Petitioner appeared by Kevin J. Ryan, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether the deductions claimed on petitioner's Federal Schedule C are allowable for New York State and City purposes.

FINDINGS OF FACT

1. John M. Johnston (hereinafter "petitioner") timely filed a 1979 New York State Income Tax Nonresident Return (With City of New York Nonresident Earnings Tax) with his wife, Suzanne Johnston, under filing status "Married filing separately on one return". On such return petitioner reported business

income attributable to New York sources of \$242,777.00. Annexed thereto was a copy of petitioner's 1979 Federal Schedule C (Profit or Loss From Business or Profession) whereon he reported gross receipts from his activities as a lawyer of \$301,956.00, less total deductions of \$35,987.00, for a reported net profit of \$265,969.00. Said net profit was multiplied by 91.28% to yield the aforestated portion reported as allocable to New York of \$242,777.00. Petitioner's business address, as reported on said schedule was 125 Worth Avenue, Palm Beach, Florida.

2. On February 11, 1983, the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein petitioner's claimed Schedule C deductions were disallowed in full based on the following explanation:

"Income from a business or profession, which the taxpayer operates himself, as a sole proprietor (not as a partner or corporation), is reported in detail on separate Schedule "C" (Form 1040).

The White and Case Schedule K shows your distributive share of income to be \$301,956.00 of which 91.28% is attributable to New York State sources for \$275,625.44, reportable on page 2, line 11 c of your New York State return.

The expenses claimed from your sole proprietor (sic) at 125 Worth Avenue, Palm Beach, Florida are not allowable for New York State tax purposes."

3. The Statement of Audit Changes also contained an adjustment removing petitioner's New York City unincorporated business tax modification from his reported total personal service income. This adjustment was conceded by petitioner and accordingly is not at issue herein.

4. On April 8, 1983, the Audit Division issued a Notice of Deficiency against petitioner asserting additional New York State personal income tax of \$3,780.29, additional New York City nonresident earnings tax of \$214.52, plus interest of \$1,327.89, for a total due of \$5,322.70.

5. During the year at issue petitioner was a senior partner in White & Case, a law partnership having its principal office in New York City.

6. The office at 125 Worth Avenue, Palm Beach, Florida was a satellite office of White & Case (hereinafter "the partnership").

7. Petitioner did not conduct business during 1979 as a sole proprietor. His gross receipts of \$301,956.00, as reported on his Federal Schedule C, actually represented his distributive share of income from the partnership.

8. The total deductions of \$35,987.00 claimed on petitioner's Federal Schedule C was comprised of the following:

<u>Deduction</u>	<u>Amount</u>
Automobile related expenses	\$ 2,867.00
Miscellaneous	1,582.00
Promotion	22,953.00
Gifts	525.00
Travel other than auto	1,527.00
Depreciation	1,838.00
Dues and Publications	562.00
Legal and professional services	3,600.00
Office supplies	335.00
Telephone	<u>198.00</u>
TOTAL	\$ <u>35,987.00</u>

9. Petitioner's representative alleged that the expenses deducted on petitioner's Federal Schedule C represented indirect promotional expenses which were not reimbursed by the partnership. He argued that 91.28% of such expenses were properly deductible since 91.28% of petitioner's distributive share of partnership income was allocable to New York and the aforesaid expenses were solely attributable to petitioner's partnership income.

10. The partnership paid all expenses with respect to maintaining the Florida office. According to an excerpt from the partnership agreement, the

partnership's policy, with respect to the reimbursement of business expenses, was as follows:

"'Business Expense' is expense incurred for meals, etc., for clients or counsel immediately and directly in connection with a then current office matter.

'Business Entertaining' is expense incurred in entertaining present or prospective clients when not directly connected with a current office matter.

Business Expense, as above defined, should be charged to the firm or, when appropriate, as when a luncheon conference is set up at the client's request, to the client.

While partners are also expected to do a certain amount of Business Entertaining, as above defined, each in accordance with his own circumstances, the historic policy of the firm has been and continues to be that the expense of such entertaining shall be borne by the individual partner except in special situations in which a partner is requested by the firm to do specific entertaining at firm expense."

11. No evidence, documentary or otherwise, was submitted to show that the deductions claimed by petitioner on his Federal Schedule C represented unreimbursed business expenses connected with his services as a partner in White & Case, rather than personal or other expenses not so connected with his services as a partner.

CONCLUSIONS OF LAW

A. That section 632(a) of the Tax Law provides that the New York adjusted gross income of a nonresident individual shall include:

"(1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources".

For New York City purposes, the net amount of earnings from self-employment attributable to New York City is subject to New York City nonresident earnings tax within the meaning and intent of section U46-2.0(a) of the Administrative Code of the City of New York.


B. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law and section U46-39.0(e) of the Administrative Code of the City of New York, to show that the deductions claimed on his Federal Schedule C represented expenses connected with his distributive share of partnership income derived from White & Case. Accordingly, the allocable portion of such deductions claimed for New York State and City purposes is not allowable.

C. That the petition of John M. Johnston is denied and the Notice of Deficiency dated April 8, 1983 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985


PRESIDENT


COMMISSIONER


COMMISSIONER