

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John & Barbarann Linsenmeyer :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1978. :
:

AFFIDAVIT OF MAILING

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 18th day of January, 1985, he served the within notice of Decision by certified mail upon John & Barbarann Linsenmeyer, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John & Barbarann Linsenmeyer
9 Hendrie Ave.
Riverside, CT 06878

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
18th day of January, 1985.

David Parchuck

Samuel O. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 18, 1985

John & Barbarann Linsenmeyer
9 Hendrie Ave.
Riverside, CT 06878

Dear Mr & Mrs. Linsenmeyer:

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	:	
JOHN LINSENMEYER AND BARBARANN LINSENMEYER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1978.	:	

Petitioners, John Linsenmeyer and Barbarann Linsenmeyer, 9 Hendrie Avenue, Riverside, Connecticut 06878, 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. 39229).

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 December 12, 1983 at 9:15 A.M. Petitioner John Linsenmeyer appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel.

ISSUE

Whether petitioner John Linsenmeyer, a nonresident of New York State, may allocate a portion of his distributive share of partnership income to sources without New York State where the partnership did not allocate.

FINDINGS OF FACT

1. John Linsenmeyer and Barbarann Linsenmeyer timely filed a joint New York State Income Tax Nonresident Return for the year 1978. On said return, John Linsenmeyer (hereinafter petitioner) allocated his partnership income derived from the New York law partnership of Forsyth, Decker, Murray & Hubbard to sources within and without New York State. Said allocation, which was

computed on Schedule A-1, was based on days worked within and without the State. Pursuant to said schedule, \$55,602.58 of petitioner's partnership distributive share of \$74,936.10 was reported as allocable to New York State sources.

2. On April 14, 1982, the Audit Division issued a Statement of Audit Changes wherein petitioner's entire distributive share of \$74,936.10 derived from said partnership was held subject to New York State personal income tax based on the following explanation:

"Schedule A-1, Allocation of Wage and Salary Income to New York State, may not be used to allocate a distributive share of partnership income. A distributive share of partnership income may be allocated only on the basis of the partnership allocation percentage. Since the partnership of Forsyth, Decker, Murray & Hubbard did not allocate its income, you as a member partner may not allocate your distributive share from such partnership. Thus, your total distributive share of \$74,936.10 is includible in arriving at New York adjusted gross income."

Accordingly, a Notice of Deficiency was issued against petitioner on April 14, 1982 asserting additional personal income tax of \$2,034.07, plus interest of \$592.04, for a total due of \$2,626.11.

3. Forsyth, Decker, Murray and Hubbard was headquartered at 51 West 51st Street, New York City. Petitioner alleged that the partnership also maintained a small office which was staffed on a part time basis at 287 Greenwich Avenue, Greenwich, Connecticut. However, no substantial evidence such as a letterhead or telephone listing was submitted to indicate that the partnership had maintained an office in Connecticut.

4. During the years at issue, petitioner spent a portion of his time working without New York State on the affairs of two clients, each of which was headquartered without New York State. Neither client maintained office or other facilities within the State. Petitioner alleged that he should be

entitled to an allocation based on days worked without the State on the affairs of these clients.

5. Forsyth, Decker, Murray & Hubbard did not allocate its partnership income to sources within and without New York State.

CONCLUSIONS OF LAW

A. That within the meaning and intent of 20 NYCRR 131.11, the activities of the partnership are carried on wholly within New York State even though the partners travel outside New York State for the purposes of performing any duties in connection with the partnership and even though services are performed for or on behalf of corporations located outside New York State.

B. That pursuant to section 637(b)(2) of the Tax Law, a nonresident partner may not allocate "...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...". Such income is allocated to New York sources on the same basis as the firm uses to allocate the distributive share of each partner. (See Matter of Thomas M. Debevoise et al. v. State Tax Commission, 52 A.D.2d 1023, 383 N.Y.S. 2d 698.) Accordingly, since the partnership did not allocate its income, petitioner is not properly entitled to allocate any portion of his distributive share of income from Forsyth, Decker, Murray & Hubbard to sources without New York State.

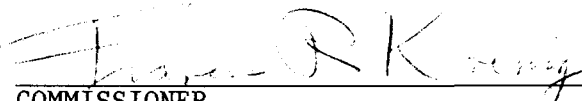
C. That the petition of John Linsenmeyer and Barbarann Linsenmeyer is denied and the Notice of Deficiency dated April 14, 1982 is hereby sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1985


PRESIDENT


COMMISSIONER


COMMISSIONER