

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

James K. Polk

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1969, 1970. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of January, 1980, he served the within notice of Decision by certified mail upon James K. Polk, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James K. Polk
Bank of Franklin Bldg.
Franklin, NC 28734

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
11th day of January, 1980.

Joanne Knapp

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of
Personal Income Tax
under Article 22 of the Tax Law
for the Years 1969, 1970.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of January, 1980, he served the within notice of Decision by certified mail upon Gerald D. Groden the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Gerald D. Groden
Whitman & Ransom
522 Fifth Ave.
New York, NY 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

James K. Polk
Bank of Franklin Bldg.
Franklin, NC 28734

Dear Mr. Polk:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Gerald D. Groden
Whitman & Ransom
522 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES K. POLK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

Petitioner, James K. Polk, Bank of Franklin Bldg., Franklin, North Carolina 28734, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970 (File No. 12748).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 7, 1979 at 1:15 P.M. Petitioner appeared by Gerald D. Groden, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (S. Freund, Esq., of counsel).

ISSUES

- I. Whether payments made to petitioner, a nonresident, by a New York partnership are taxable.
- II. Whether penalties imposed should be cancelled for reasonable cause.

FINDINGS OF FACT

1. Petitioner, James K. Polk, a resident of North Carolina, received \$25,000.00 from the partnership of Whitman, Ransom & Coulson ("the partnership") in each of the years 1969 and 1970. The partnership is a law firm organized and conducting business in the State of New York.

2. Petitioner did not file New York State personal income tax returns for 1969 and 1970. On September 30, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, James K. Polk, imposing personal income tax due of \$3,646.00, plus penalty and interest. The deficiency was issued on the grounds that the petitioner was a partner of the Whitman, Ransom & Coulson partnership and the \$25,000.00 received from the partnership was subject to personal income tax. In addition, penalties were imposed in accordance with sections 685(a) (1) and 685(a) (2) of the Tax Law.

3. Prior to April 1, 1968, petitioner was a resident of New York, and a member of the partnership. On March 31, 1968, petitioner's capital contribution to the partnership was repaid to him, along with his distributive share of partnership income, and petitioner was no longer regarded as an active partner. Subsequent to March 31, 1968, under a written retirement plan annexed to the partnership agreement, petitioner became "counsel" to the partnership.

4. The written retirement plan annexed to the partnership agreement provided, in part, that:

- a) There are three classes of partners, active partners, transition partners and counsel.
- b) All active partners "shall not have reached the age of 70 years."
- c) All partners between the ages of 70 and 72 years shall be "transition partners."
- d) "All such partners who have attained the age of 72 years" are classified as "counsel."
- e) "Counsel's duties shall be to advise with and to assist the Active and Transition Partners as called upon by them; to handle all his law practice through the firm and to turn in to the firm all fees received by him for legal services."

- f) "A counsel's tenure shall continue for ten calendar years from the date he became Counsel, or until his eighty-second birthday, whichever date sooner occurs."
- g) The annual compensation for counsel is "dependent upon his percentage interest in the firm's profits as at the date he entered the transition period."
- h) Upon his death, a counsel's widow, or children, would be entitled to annual compensation, dependent on various conditions set forth in the plan.
- i) Petitioner was entitled to an annual rate of compensation of \$25,000.00, based on an 8 percent percentage interest as of the date he entered the transition period.

5. Petitioner contended that, from time to time, during the years 1969 and 1970 he advised and assisted members of the partnership by telephone or by mail. He also contended that he never visited the partnership's law offices and was never present in New York State at any time during 1969 and 1970. Accordingly, petitioner reasoned that the \$25,000.00 payments at issue were not taxable by New York State, since they represented payments for consulting services, which were rendered wholly without New York State.

6. The partnership of Whitman, Ransom & Coulson did not maintain a regular place of doing business outside the State of New York during 1969 and 1970.

7. Petitioner acted with reasonable cause in not filing New York State income tax returns for the years at issue.

CONCLUSIONS OF LAW

A. That the \$25,000.00 received by petitioner, James K. Polk, in each of the years 1969 and 1970 represented a retirement benefit [which does not constitute an annuity within the meaning and intent of 20 NYCRR 131.4(d)]

derived from or connected with New York sources attributable to a business, trade, profession or occupation carried on in New York State and, as such, is an item of income, which must be included in petitioner's New York adjusted gross income in accordance with the meaning and intent of section 632 of the Tax Law.

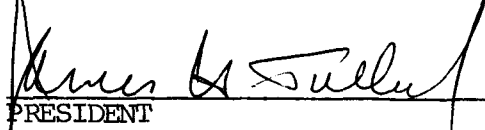
B. That petitioner James K. Polk's failure to file New York State income tax returns and pay the tax due for 1969 and 1970 was due to reasonable cause; therefore, the penalties imposed pursuant to sections 685(a) (1) and 685(a) (2) of the Tax Law are cancelled.


C. That the petition of James K. Polk is granted to the extent contained in Conclusion of Law "B"; that the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued September 30, 1974; that the tax due shall be together with such additional interest as may be lawfully owing; and that, except as so granted, the petition is in all other respects denied.

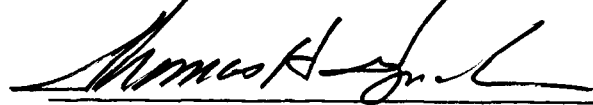
DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER