

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Joseph T. C. Hart :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income Tax
under Article(s) 22 of the Tax Law :
for the Year 1980.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of June, 1986, he/she served the within notice of Decision by certified mail upon Joseph T. C. Hart the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph T. C. Hart
2241 Palmer Ave.
New Rochelle, NY 10801

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
17th day of June, 1986.

Janet M. Snay

Daniel J. Rancilli
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
George Rowe, Jr. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income Tax
under Article(s) 22 of the Tax Law :
for the Year 1980.

State of New York :

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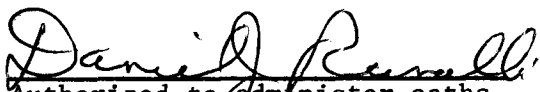
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George Rowe, Jr.
11 S. Cottenet St.
Irvington, NY 10533

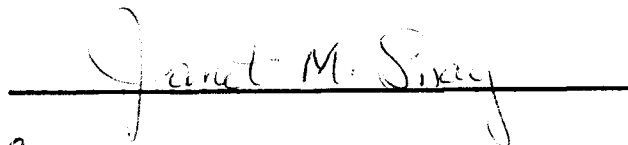
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Sworn to before me this
17th day of June, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



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

June 17, 1986

Joseph T. C. Hart
2241 Palmer Ave.
New Rochelle, NY 10801

Dear Mr. Hart:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

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

June 17, 1986

George Rowe, Jr.
11 S. Cottenet St.
Irvington, NY 10533

Dear Mr. Rowe:

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Very truly yours,

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STATE OF NEW YORK

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In the Matter of the Petition	:	
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of	:	
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JOSEPH T. C. HART	:	
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for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	
	:	DECISION

In the Matter of the Petition	:
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of	:
	:
GEORGE ROWE, JR.	:
	:
for Redetermination of a Deficiency or for	:
Refund of Personal Income Tax under Article 22	:
of the Tax Law for the Year 1980.	:

Petitioner Joseph T. C. Hart, 2241 Palmer Avenue, New Rochelle, New York 10801, 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 1980 (File No. 52152).

Petitioner George Rowe, Jr., 11 South Cottenet Street, Irvington, New York 10533, 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 1980 (File No. 52353).

A consolidated hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1985 at 2:45 P.M., with all briefs to be submitted by January 7, 1986. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether New York City unincorporated business taxes paid by petitioners' law firm should be included in their personal service income for purposes of computing New York State maximum tax on personal service income.

FINDINGS OF FACT

1. Petitioners, Joseph T. C. Hart and George Rowe, Jr., were partners in the law firm of Fulton, Duncombe & Rowe which derived income from New York State and New York City sources. The partnership timely filed a New York State and New York City partnership return for 1980.

2. Each petitioner timely filed a New York State Income Tax Resident Return on Form IT-201 for calendar year 1980. On Schedule A, each reported his New York income including a sum which represented each petitioner's distributive share of the ordinary income of the law firm as reported by the firm for Federal income tax purposes for the year 1980.

3. As required by section 612(b)(3) of the Tax Law, each petitioner added back to his Federal adjusted gross income a sum which represented his share of the New York City unincorporated business tax paid by the law firm on its income from New York City sources. This tax had been deducted by the firm in computing the ordinary income of the law firm.

4. All of the income of the law firm was derived from the practice of law and was personal service income as defined in section 1348 of the Internal Revenue Code in effect during the year in issue.

5. Petitioners computed the maximum tax on personal service income on Form IT-250 which each attached to his New York State Resident Return. On line 2 of that form Mr. Hart reported a total personal service income of \$94,767.82, arriving at this amount by adding his share of the New York City

unincorporated business tax paid by his law firm (\$3,655.00) to his share of the ordinary income of the law firm as reported by him on his New York State Income Tax Resident Return (\$91,112.82). Mr. Rowe reported a total personal service income of \$242,842.00 computing this amount in the same manner as Mr. Hart.

6. On October 24, 1983, the Audit Division issued to Mr. Hart a Statement of Audit Changes which explained that the maximum tax benefit on his 1980 New York State income tax return had been recomputed on the basis of an examination of the law firm's partnership return which reported Mr. Hart's distributive share of the firm's ordinary income as \$91,113.00. This resulted in personal income tax due of \$89.22 plus interest. A similar statement was issued to Mr. Rowe.

8. In response to the Statement of Audit Changes, Mr. Hart sent a letter to the Audit Division stating, in pertinent part:

"My distributive share of partnership income cited by you, although correct for federal income tax purposes, fails to take into account \$3,655 which the firm paid in New York City Unincorporated Business Taxes, which although deductible for federal income tax purposes, is not deductible for New York State income tax purposes.

Thus, my New York State personal service income would equal the federal amount referred to by you plus the additional \$3,655, paid by the firm in New York City Unincorporated Business Taxes, which New York State requires be added back in."

Mr. Rowe sent a substantially similar letter to the Audit Division.

9. A Notice of Deficiency was issued to Mr. Hart on April 5, 1984 asserting additional tax due for the year 1980 of \$89.22 plus interest. On the same date, a Notice of Deficiency was issued to Mr. Rowe asserting a tax due for the year 1980 of \$262.33 plus interest.

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 are includible in New York State adjusted gross income.

B. That once the taxpayer has determined what items of New York source income constitute personal service income, the taxpayer must then calculate his personal service taxable income. Section 603-A(c) of the Tax Law defines "New York personal service net income" as personal service income reduced first by any deductions allowable under section 62 of the Internal Revenue Code which are properly allocable or chargeable against New York personal service income. New York City unincorporated business taxes are allowable deductions under section 62 of the Internal Revenue Code. Therefore, petitioners' personal service income was properly reduced by an amount representing each petitioner's distributive share of those taxes.

C. That Tax Law section 612(b)(3) requires that any state, local and foreign income taxes deducted as expenses in arriving at Federal adjusted gross income be added back for purposes of determining New York adjusted gross income. This modification is not included in section 603-A(b)(1) of the Tax Law which defines "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, where 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 paragraphs seven, eight and nine of subsection (b) of section six hundred twelve." Where one or more exceptions are expressly made


in a statute, it may be fairly inferred that the legislature intended that no other exceptions be made, by implication or otherwise (Matter of Marx v. State Tax Comm., 103 A.D.2d 905). Accordingly, the modification contained in section 612(b)(3) cannot be read into section 603-A(b)(1) of the Tax Law.

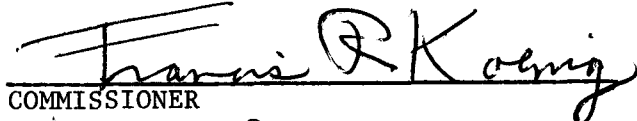
D. That the petitions of Joseph T. C. Hart and George Rowe, Jr. are denied and the notices of deficiency dated April 5, 1984 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER