

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gordon B. & Dolores O. Spivack : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law and Chapter 46, Title T of the :
Administrative Code of the City of New York for :
the Year 1980. :

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 4th day of April, 1986, he/she served the within notice of Decision by certified mail upon Gordon B. & Dolores O. Spivack the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gordon B. & Dolores O. Spivack
118 Townsend Terrace
New Haven, CT 06512

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
4th day of April, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

April 4, 1986

Gordon B. & Dolores O. Spivack
118 Townsend Terrace
New Haven, CT 06512

Dear Mr. & Mrs. Spivack:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, 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	:	
GORDON B. SPIVACK and DOLORES O. SPIVACK	:	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 1980.	:	

Petitioners, Gordon B. Spivack and Dolores O. Spivack, 118 Townsend Terrace, New Haven, Connecticut 06512, 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 1980 (File No. 52753).

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 December 17, 1985 at 2:45 P.M. Petitioner Gordon B. Spivack appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether petitioner Gordon B. Spivack, a nonresident of New York State, may allocate a portion of his distributive share of partnership income to sources without the State and City of New York, when the partnership did not so allocate.

FINDINGS OF FACT

1. Gordon B. Spivack and Dolores O. Spivack timely filed a joint New York State Income Tax Nonresident Return (with City of New York Nonresident Earnings

Tax) for the year 1980. On said return, Gordon B. Spivack (hereinafter "petitioner") allocated his partnership income derived from the New York law partnership of Lord, Day & Lord to sources within and without the State and City of New York. According to such return, petitioner allocated 60% of his partnership income of \$674,378.26 to New York State and City.

2. On April 6, 1984, the Audit Division issued a Statement of Audit Changes to petitioner and his wife wherein petitioner's entire distributive share from said partnership was held taxable for New York State and City purposes based on the following explanation:

"Income received by a nonresident from a New York law firm in which he is a partner is allocated to New York for personal income tax purposes on the same basis as the firm uses to allocate the distributive share of each partner. Since the New York firm of Lord, Day & Lord, of which you are a member partner, did not allocate its income, your entire distributive share from such partnership is subject to New York State personal income tax and New York City nonresident earnings tax."

3. Said statement additionally provided for a modification increasing petitioner's New York State income by his distributive share of the New York City unincorporated business tax deduction taken on the partnership return. However, this adjustment was not contested by petitioner and accordingly, is not at issue herein.

4. Based on the aforestated Statement of Audit Changes, the Audit Division issued a Notice of Deficiency against petitioner and his wife on April 6, 1984 asserting additional New York State personal income tax of \$31,437.81, additional New York City nonresident earnings tax of \$1,743.27, plus interest of \$11,889.01, for a total due of \$45,070.09.

5. Petitioner was a partner in Lord, Day & Lord during 1980. Said partnership, which was located at 25 Broadway, New York, New York 10004, allocated 100% of its income to New York.

6. Petitioner argued that he is properly entitled to allocate a portion of his distributive share of partnership income to sources without the State and City of New York since the principal factors used by the partnership in determining its distribution of profits were business generated and billable time.

7. During 1980 petitioner practiced antitrust law on a national basis. Over 40% of the amounts he collected from his clients for which the partnership gave him credit in determining his 1980 distribution was for work performed without New York for clients located without New York. Petitioner argued that his reported allocation was proper since it included the income attributable to services rendered in New York for clients located without New York as well as the income attributable to services rendered without New York for clients located within New York.

CONCLUSIONS OF LAW

A. 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 Lord, Day & Lord to sources without New York State and City.

B. That the petition of Gordon B. Spivack and Dolores O. Spivack is denied and the Notice of Deficiency dated April 6, 1984 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1986

Rodman W. Allen
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Jurek
COMMISSIONER