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MEMORANDUM

Income Tax Determinations
Taylor, Robert H. A-2

TO: Commissioners Murphy, Palastin & Macduff
FROM: Solomon Sles, Hearing Officer
SUBJECT: ROBERT W. TAYLOR

Petition for Redetermination of a Deficiency
or for Refund of Personal Income Taxes under
Article 22 of the Tax Law for the Year 1961

File #1-7782614

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y., on January 9, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue involved herein is whether the taxpayer, a non-resident, and partner in a New York partnership, is entitled to an allocation of a portion of his distributive share from the New York co-partnership which represents services rendered by the taxpayer as accountant to clients located within the state of New Jersey where taxpayer has permitted such fees to become partnership income.

In 1950, the taxpayer was an employee of the accounting firm of Dunn & Rollins, located in the city of New York. His title was that of senior auditor conducting audits of various types for various firms and the preparation of financial statements on behalf of clients of the accounting firm of Dunn and Rollins. All of the clients serviced by the taxpayer on behalf of Dunn and Rollins were located in New York. The taxpayer, at that time, was a resident of the state of New Jersey. While employed in 1950, the taxpayer conducted a private practice as a public accountant in the state of New Jersey, servicing his own clients who were located in that state. In connection with his self-employment, the taxpayer maintained an office from his home.

In 1956, the taxpayer became a partner in Dunn and Rollins and continued to render accounting services to his own clients in New Jersey but permitted the income received from these clients to be part of the income of the New York accounting partnership of Dunn and Rollins. The name of firm was changed to Dunn and Taylor in 1959 and the taxpayer was a 50% partner. The same arrangement continued with respect to the clients serviced by the taxpayer and the income was accredited to the partnership. The taxpayer was certified as a public accountant in the state of New Jersey in 1956. In 1959, he was certified as a public accountant in this State by the Education Department of the State of New York. As a partner in the firm of Dunn and Taylor, the taxpayer supervised various members of the staff in the performance of general auditing and tax work for the firm. He

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served on behalf of the partnership approximately 200 accounts in the state of New York.

The firm of Dunn & Taylor did not during the year in issue maintain an office as accountants and auditors in the state of New Jersey. Its sole place of business was located at 40 Exchange Place, New York City. The partnership was not listed in any New Jersey directory. The stationery of the partnership did not bear any New Jersey address; only the New York address. The taxpayer testified that in 1956 the predecessor co-partnership was listed in the Manhattan directory with an additional address in New Jersey of the taxpayer's home and telephone number there (Minutes of Hearing, page 8); that an investigator from the New York State Education Department upon taxpayer's petition for the reciprocal public accountant certificate in New York directed that all notice or publicity of his being a public accountant in New Jersey be removed from any of the Dunn & Taylor stationery, phone listings or correspondence; otherwise, they would not endorse his certificate; that although the telephone listing could have been reinserted in the New Jersey directory, it was not done because the taxpayer was not actively engaged in soliciting new accounts in New Jersey (Minutes of Hearing, page 9). The clients were billed on the letterhead of the co-partnership and the income derived therefrom was co-mingled with the partnership funds.

In Manual of Policy, Income Tax Bureau, Article 457--Page 1, (8/25/58), it is stated that:

"A non-resident who is in business or a partnership having a non-resident member may wish to allocate net business income within and without the state. Such allocation is permissible only if bona-fide places of business are maintained outside New York State, the only place or places of business being located within the state, the entire net business income is taxable, regardless of the residence of the proprietor or partner. This is so, even though sales may be made, or services rendered, outside the state."

Article 455 of the Income Tax Regulations, provides, in part, that:

"The entire net income of a non-resident from a business, trade, profession or occupation, carried on within the state (as business carried on is defined in article 415), and not carried on elsewhere, as so defined, is income from a source within the state of New York and taxable as such."

The words "business carried on" as defined under Article 415 of the Income Tax Regulations connote the maintenance of a regu-

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lar and continuous place of operations regularly carried on notwithstanding occasional consummation of isolated transactions without the state.

I am of the opinion that the partnership of Dunn & Taylor of which the taxpayer was a co-partner had its sole place of business in the city and state of New York and that it did not maintain a place of business in the state of New Jersey; that the taxpayer elected to consider the clients serviced by him in the state of New Jersey as partnership income; that no part of the taxpayer's home in New Jersey constituted a place of business of the co-partnership in the state of New Jersey; that the co-partnership did not claim an allocation of income attributable without the state of New York; that the total income received by the taxpayer from the co-partnership constituted his distributive share of income attributable to New York sources; that the taxpayer, therefore, was not entitled to an allocation of income attributable to sources outside of the state of New York.

For the reasons stated above, I recommend that the determination of the Tax Commission in this matter be substantially in the form submitted herewith.

SEP 15 1965

SOLOMON SIES

Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

E. H. BEST

Approved

SS/te

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF
ROBERT W. TAYLOR
FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 OF THE TAX LAW FOR THE
YEAR 1961.

Robert W. Taylor, the taxpayer herein, having duly filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on the 5th day of January, 1963, before Solomon Bies, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer appeared personally, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That at all of the times hereinafter mentioned, the taxpayer Robert W. Taylor was and still is a non-resident of the state of New York, residing in the state of New Jersey; that during the year 1961 and prior thereto the taxpayer was a partner in the New York partnership accounting firm of Dunn & Taylor; that the taxpayer Robert W. Taylor and his wife Lee Taylor filed a combined non-resident income tax return for the year 1961 in which the taxpayer Robert W. Taylor reported partnership income from the New York partnership firm of Dunn & Taylor in the sum of \$15,078.28; that the taxpayer Robert W. Taylor deducted from said income the sum of \$5,940.00, which he claims was allocable to earnings without the state of New York; that on August 28, 1963, the Department of Taxation and Finance issued a statement of audit changes against the taxpayer Robert W. Taylor disallowing the allocation in the sum of \$5,940.00 and included said sum in the com-

putation of additional income attributable to the taxpayer within the state of New York and accordingly issued a notice of deficiency to reflect said changes on June 1, 1964.

(2) That in 1950, the taxpayer was employed by the accounting firm of Lunn & Hollins, having its sole place of business in the city and state of New York; that the taxpayer was employed as a senior auditor conducting audits of various types for various firms and prepared financial statements on behalf of his employer; that all of said services as an employee were rendered within the state of New York; that the taxpayer, a non-resident at that time, while so employed, conducted a private practice as a public accountant in the state of New Jersey, servicing his own clients who were located in that state; that in connection with the aforementioned self-employment, the taxpayer maintained an office in his home; that in 1956 the taxpayer became a partner in the accounting firm of Lunn & Hollins and continued to render accounting services for his own clients in the state of New Jersey but permitted the income received from these clients to be part of the income of the New York accounting firm of Lunn & Hollins; that the latter partnership firm was terminated in 1959 and a new partnership was formed at that time under the name of Lunn & Taylor and the taxpayer was a partner in said firm; that the same arrangement continued with respect to the clients previously serviced by the taxpayer in the state of New Jersey; that the income derived therefrom was accredited to the partnership of Lunn & Taylor; that the taxpayer was certified as a public accountant in the state of New Jersey in 1956 and was certified as a public accountant by the Education Department of the state of New York in 1959.

(3) That during the year 1961, the taxpayer, a partner in the firm of Lunn & Taylor, supervised various members of the staff in the performance of general auditing and tax work for said partnership firm which was located at 40 Exchange Place, New York City; that the taxpayer serviced on behalf of the partnership approximately 200 accounts in the state of New York during the year 1961; that in addition, the taxpayer Robert W. Taylor serviced or performed services on behalf of 14

clients in the state of New Jersey; that the fees received from such clients were billed on the letterhead of the New York partnership and the income derived therefrom was treated for all intents and purposes as income of the partnership of Dunn & Taylor.

(4) That during the year 1961, the accounting firm of Dunn & Taylor maintained its sole place of business within the city and state of New York; that it did not maintain any office or other place of business within the state of New Jersey; that no part of the taxpayer's home in New Jersey constituted an office of the partnership of Dunn & Taylor; that the partnership of Dunn & Taylor was not listed in any New Jersey directory; that the stationery of the firm of Dunn & Taylor did not indicate any address of place of business in New Jersey, only in New York City; that the services rendered by the taxpayer Robert W. Taylor to clients in the state of New Jersey were rendered on behalf of the partnership of Dunn & Taylor; that the accounting clients in New Jersey were billed by the partnership of Dunn & Taylor; that the fees received from said clients were attributable to income of the co-partnership of Dunn & Taylor and so carried on its business books and records; that no allocation of income attributable outside the state of New York was claimed by the partnership of Dunn & Taylor for the year 1961.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

SUMMARY AND DECISION:

(A) That the entire distributive share of income of the taxpayer Robert W. Taylor received from the New York partnership of Dunn & Taylor was attributable to New York State sources and that the taxpayer was not entitled to an allocation of such income in accordance with Section 367 (a) (1) (c) and Section 617 (a) of the Tax Law.

(B) That, accordingly, the statement of audit charges and the notice of deficiency issued to the taxpayer for the year 1961 are correct; that said notice of deficiency does not contain any tax or other charge which could not have been lawfully demanded and that the

taxpayer's petition for redetermination of a deficiency under Article 22 of the Tax Law be and the same is hereby dismissed.

DATED: Albany, New York, on the 13th day of January, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

Commissioner