

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THURLOW M. GORDON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(ss)~~ 22 of the :
Tax Law for the Year ~~(x) or Period(s)~~ 1969.:

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of October, 1976, she served the within
Notice of Decision by (certified) mail upon Thurlow M. Gordon

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Thurlow M. Gordon
c/o Albert Gordon
18 Stadium Road
Methuen, Massachusetts 01844
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)~~
~~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

4th day of October, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THURLOW M. GORDON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year (x) ~~xx~~ ~~Period(s)~~ 1969.:

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of October, 1976, she served the within
Notice of Decision by (certified) mail upon John R. Young, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John R. Young, Esq.
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005
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

4th day of October, 1976

Janet Mack

Catherine Steele



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

October 4, 1976

TELEPHONE: (518) **457-3850**

Mr. Thurlow M. Gordon
c/o Albert Gordon
18 Stadium Road
Methuen, Massachusetts 01844

Dear Mr. Gordon:

Please take notice of the **Decision**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section **(a) 690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THURLOW M. GORDON	:	DECISION
for a Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article	:	
22 of the Tax Law for the Year 1969.	:	

Petitioner, Thurlow M. Gordon, c/o Albert Gordon, 18 Stadium Road, Methuen, Massachusetts 01844, 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 1969. (File No. 9-392251256). A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 13, 1976. Petitioner appeared by John R. Young, Esq. of Cahill, Gordon and Reindel. The Income Tax Bureau appeared by Peter Crotty, Jr., Esq., (William Fox, Esq. of counsel).

ISSUE

Whether the partnership income received from Cahill, Gordon, Sonnett, Reindel and Ohl is taxable to the petitioner, Thurlow M. Gordon, a nonresident for the year 1969.

FINDINGS OF FACT

1. On April 13, 1973, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$455.92 including interest.
2. The petitioner, Thurlow M. Gordon, was a partner in the law firm of Cahill, Gordon and Reindel. On or about the year 1960, the petitioner retired and withdrew his entire capital account. His name was removed from the letterhead and from the Certificate of Conducting Business under the partnership name.

3. Commencing with the year 1960, the firm of Cahill, Gordon and Reindel began making payments of \$35,000.00 a year to the petitioner.

4. On July 1, 1969, the taxpayer abandoned his New York residence and became a resident of the State of Massachusetts. As the firm of Cahill, Gordon and Reindel changed its accounting period in 1969 from a calendar year to a fiscal year ending September 30, the taxpayer reported only three-quarters of the annual payment of \$35,000.00 on his 1969 Federal return.

5. A "Pension Plan for Partners" was adopted by said company on May 28, 1968. Petitioner asserts that the firm conferred its benefits upon him in recognition of his past employment relationship with the firm even though he had retired some eight (8) years earlier.

6. The petitioner has stated, that while being covered under the firms pension plan he was not subject to all of the provisions of said plan. Specifically, paragraphs three (3) and four (4) and paragraph two (2) part (1) of page 8 of the Pension Plan for Partners.

7. The petitioner has argued that the payment of \$35,000.00 received in the year 1969, from the pension plan of said firm, would not be taxable to a nonresident within the meaning and intent of section 632(b)(2) of the Tax Law as such amount constituted an annuity.

8. The petitioner, citing New York Personal Income Tax Regulations section 131.4(d)(2), which defines the requirements needed to qualify periodic payments as an annuity, has argued that he meets all of these requirements.

9. The petitioner has further stated that the question which arises as to the references of the terms "employee and employer" under this Regulation are used for convenience only and add no substantive requirement to said definition.

A. That the petitioner has failed to show that he was covered by the firm's pension plan or to verify why certain provisions in the plan were inapplicable with respect to the petitioner.

B. That the petitioner has not shown that the payment received by the petitioner from the firm of Cahill, Gordon, Sonnett, Reindel and Ohl in the year 1969 constitutes an annuity within the meaning and intent of New York Personal Income Tax Regulations section 131.4(d)(2).

C. That the petition of Thurlow M. Gordon is denied and the Notice of Deficiency is sustained together with such interest as may be lawfully owing.

DATED: Albany, New York
October 4, 1976

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER