

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORBERT L. GRUNWALD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income Tax :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~20 Period(s)~~ :
1963 through 1968.

State of New York
County of Albany

Jean Wager

, 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 August , 1976 , she served the within
Notice of Decision by (certified) mail upon Norbert L.

Grunwald (~~Representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Norbert L. Grunwald
3505 South Vale Road
Baltimore, Maryland 21208

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 August , 1976.

Jane Mack

Jean Wager

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORBERT L. GRUNWALD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income Tax :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~on Period(s)~~ :
1963 through 1968

State of New York
County of Albany

Jean Wager, 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 August, 1976, she served the within Notice of Decision by (certified) mail upon Irving L. Baumwald (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Irving L. Baumwald, CPA
500 5th Avenue
New York, New York 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

4th day of August, 1976.

Janet Mack

Jean Wager



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 4, 1976

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

Norbert L. Grunwald
3505 South Vale Road
Baltimore, Maryland 21208

Dear Mr. Grunwald:

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

Please take further notice that pursuant to
Section(s) **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,

Paul B. Coburn
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NORBERT L. GRUNWALD	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1963 through 1968.	:	

Norbert L. Grunwald, 3505 South Vale Road, Baltimore, Maryland 21208, filed a petition under section 689 of the Tax Law for redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the years 1963 through 1968.

Said deficiency was asserted by notice issued May 21, 1973, under file number 0-69871304 and is in the amount of \$13,825.71 plus interest of \$4,511.08 and a penalty under section 685(a) of the Tax Law of \$3,456.44 for a total of \$21,793.23.

A hearing was duly held on June 10, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Irving L. Baumwald, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by James A. Scott, Esq.

ISSUE

The issue in this case is whether the petitioner, a nonresident, is in fact a partner, rather than an employee, of a New York based partnership and, if he is a partner, whether the distributive share he receives from the partnership may under the circumstances of this case be considered by the Commission, under the discretionary authority of section 637(d) of the Tax Law, to be income from non-New York sources.

FINDINGS OF FACT

1. Petitioner is a domiciliary and resident of Baltimore, Maryland.
2. Petitioner is a securities broker associated since 1960 with the partnership of Gruntal & Co., a securities broker with its main office in New York City and a branch office in Baltimore, Maryland. At all times herein, petitioner worked at the Baltimore office.
3. In 1960, petitioner was appointed resident manager of the Baltimore branch office. His compensation was 35% of all commissions generated by himself (the same as a registered representative), a 5% override on all commissions generated by the registered representatives, and 50% of commissions from sales of mutual funds generated by the office. This compensation totaled from \$26,000.00 to \$39,000.00 a year.

4. On July 1, 1963, petitioner was named as both a general and a limited partner of Gruntal & Co. He contributed \$20,000 to the capital of the firm and was assigned a 1% interest in profits plus a guaranteed amount of \$25,000.00 a year. His interest in profits was, however, offset against his compensation under the 1960 agreement which remained in effect. Under this agreement, he received from \$30,000.00 to \$90,000.00 during the years in question. In each year petitioner's compensation as computed under the formula came within a few hundred dollars of his 1% interest plus guarantee of \$25,000.00 under the partnership agreement.

5. In 1974, the firm of Gruntal & Co. was reorganized and petitioner's interest therein was increased substantially to about 5%.

6. The admission of Mr. Grunwald to membership in the firm in 1963 was merely to provide him with additional status with respect to customers. Mr. Grunwald did not in fact participate in the management of the firm at any time from 1963 until sometime in 1974 when his interest was increased.

CONCLUSIONS OF LAW

A. That the petitioner must be held to be a partner and not an employee. He was held out as a partner, had made a capital

contribution as a partner and was represented to be a partner in tax returns (see Halstead v. Comm. 296 F2d 61; Frances H. Monek U.S. Tax Court memo. dec. 1966-110).

B. That as a partner in a firm doing business in New York, petitioner must report as New York source income a portion of his distributive share of the income of the partnership.

C. That the discretionary authority of the Commission under section 637(d) of the Tax Law will not be exercised in favor of petitioner.

D. That the deficiency under review is correct and is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
August 4, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER