

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

CHARLES E. BAXLEY and MARY LOU BAXLEY

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968, 1969 and 1970.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 12th day of January , 1977, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Charles E. Baxley &
Mary Lou Baxley (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Charles E. Baxley
Six Clearview Drive
Summit, New Jersey 07901

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

12th day of January , 1977.

Bruce Batchelor

Janet Mack



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

January 12, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Charles E. Baxley
Six Clearview Drive
Summit, New Jersey 07901

Dear Mr. & Mrs. Baxley:

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

Please take further notice that pursuant to
Section(§) **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. Soburn
Paul B. Soburn
Supervising Tax
Hearing Officer

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES E. BAXLEY and MARY LOU BAXLEY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the years	:	
1968, 1969 and 1970.	:	

Charles E. Baxley and Mary Lou Baxley, Six Clearview Drive, Summit, New Jersey 07901, filed petitions under section 689 of the Tax Law for redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970. (File No. 0-53287786).

The deficiency for 1968 was asserted by notice issued December 18, 1972, in the amount of \$1,222.39 plus interest of \$269.52 for a total of \$1,491.91. The deficiency for 1969 and 1970 was asserted by a notice issued April 13, 1973 and is in the amount of \$7,981.59, plus interest of \$1,262.98 for a total of \$9,244.57.

A formal hearing was duly held on March 11, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners were not represented. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel). The record of said hearing has been

duly examined and considered.

ISSUE

Whether certain income of a nonresident was properly reportable as a distribution from a New York based partnership or whether it was earned by the nonresident directly from out-of-state sources.

FINDINGS OF FACT

1. Petitioners, Charles E. and Mary Lou Baxley, during the period 1968 through 1970, resided in Summit, New Jersey, and were nonresidents of New York.

2. Mr. Baxley graduated from Manhattan College in 1952 and Columbia University in 1954 with degrees in engineering. He was in a doctorate program when he was drafted into the U.S. Army in 1954. While in the Army, Mr. Baxley was stationed in San Francisco and went nights to classes at the University of San Francisco Law School. He left the service in 1956 and began teaching engineering at Cooper Union in New York City. While there, he completed law school at St. John's University and received a law degree in 1958. He was also admitted to the New York Bar in 1958.

3. In 1958 Mr. Baxley went to work for Stone and Webster where he was involved in overall economic and technical research and consulting concerning plant location and capital spending by public utilities and refiners. In 1959 Mr. Baxley was employed by the Worthington Corporation, where he apprenticed and finally qualified with the U. S. Patent Office as a patent agent.

His duties involved analyzing inventions. In 1961 Mr. Baxley worked for Foster-Wheeler Corporation. There his work consisted of writing economic reports and conducting laboratory tests in the evaluation of new products. In 1963 Mr. Baxley was employed by Alcorn Combustion Company. He was an assistant to the President and was involved in many areas including personnel and advertising.

4. In 1966 Mr. Baxley was invited by Mr. Francis J. Sullivan to join the law firm of which Mr. Sullivan was the senior partner, Liddy, Sullivan, Hart and Daniels at 253 Broadway, New York, New York. Mr. Sullivan is a noted trade mark specialist. An informal agreement was made that Mr. Baxley was to learn that area of law and aid Mr. Sullivan. Shortly after Mr. Baxley joined the firm, however, the two men disagreed and in November this informal agreement was ended.

5. The partnership agreement provided that each partner would keep his own fees except to the extent that individual partners agreed to another arrangement on an individual case basis. Each partner would be charged with the costs of his own office space, secretary and office furniture. The common costs of a receptionist, bookkeeper and common space were to be shared. A partner could withdraw but would still be liable on the lease of office space for the ten year term of the lease. This annual rent for Mr. Baxley could run as high as \$27,000.00.

6. At this time, Mr. Baxley listed himself in the Martindale-Hubbell Legal Directory with a description of his specialties which involved engineering and engineering teacher. Later, that Directory refused to list such information because it was unrelated to law.

7. At the New York office of the partnership, Mr. Baxley kept his law books and carried on a small general law practice.

8. One of Mr. Baxley's clients was his former employer, Alcorn Combustion Company. This involved legal work done at least partly in New York. Another client was Lummus Company of Bloomfield, New Jersey.

9. The largest client Mr. Baxley had was Hoechst-Uhde Corporation of 550 Sylvan Avenue, Englewood Cliffs, New Jersey, an affiliate of I. G. Farben Industries.

10. Mr. Baxley charged Hoechst a stipulated amount for a minimum amount of 20 hours and an hourly fee for excess hours. This was billed through the Liddy partnership. At Hoechst, Mr. Baxley had office space and a secretary assigned to him, access to computer facilities and the cooperation of the engineering staff.

11. The work Mr. Baxley did for Hoechst concerned the building of a large chemical complex in Donaldsonville, Louisiana, which involved a plant for the manufacture of melamine, owned by Ashland Oil and Chemical Company and another unnamed company; a plant for the manufacture of urea, owned by three Mississippi based corporations; and a plant for the manufacture of ammonia, owned apparently by the parent company of Hoechst and by a

Dutch company. This work involved the interchange and compatability of the very complex chemistry of materials in tremendous quantities and their semi-products and final products, the profitability and comparative quality of alternative processes, and the relationships of the various owners in the entire complex.

12. At his home in Summit, New Jersey, Mr. Baxley did some legal work and some patent work. He was not admitted to practice law in New Jersey. He kept his technical books and a set of the United States Patent Quarterly at his home.

13. The 1968 New York tax return filed by petitioners showed income from partnerships allocated 58% to New York. This was arrived at by the ratio of 129 days worked by Mr. Baxley in New York to 223 days worked everywhere. Mr. Baxley estimates that in 1968, from forty to fifty percent of his income was derived from his work as either a lawyer or as a patent agent, both of which work he performed either in the New York office of the Liddy firm or at his own home in Summit, New Jersey. The remainder of his income came from work which was engineering in character and which was performed entirely outside of New York State. The figures for 1969 and 1970 are comparable.

CONCLUSIONS OF LAW

A. That it is absolutely clear that Mr. Baxley's work for Hoechst in New Jersey was of an engineering character. Although his income from such work was channeled through the bookkeeper at the New York law partnership, this income was not and could not have been the income of the law partnership. Such income must be found to be derived entirely from non-New York sources. Mr. Baxley's income from legal and patent work taken together is conceded by petitioners to be partly from New York sources. They have ceased to assert a claim that part of such income is from New Jersey sources and have not furnished sufficiently accurate figures for an allocation, if one were to be permitted. The figures reported on the New York returns as filed shall be taken, for lack of more precise figures, as the income received from engineering work in New Jersey.

B. That the deficiencies are erroneous in their entirety and are cancelled.

DATED: Albany, New York
January 12, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER