

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SYLVAN M. MARSHALL

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)~~ ~~1970~~ ~~(x)~~ 1971. :

State of New York
County of Albany

John Huhn , 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 13th day of December , 1978, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Sylvan M. Marshall

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Sylvan M. Marshall
1825 K Street, Northwest
Washington, D.C. 20006

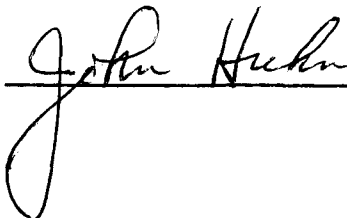
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of December , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SYLVAN M. MARSHALL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(*)~~ 22 of the :
Tax Law for the Year ~~(*)~~ 1971. :

State of New York
County of Albany


John Huhn , 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 13th day of December , 1978, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Leon N. Weiss
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leon N. Weiss, CPA
271 North Avenue
New Rochelle, New York 10801

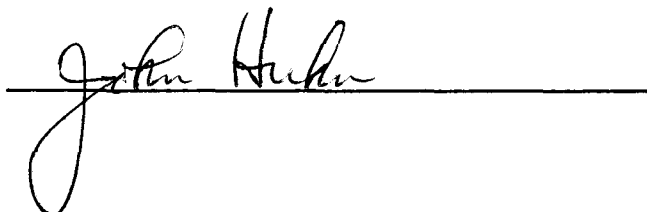
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of December , 1978.







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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

December 13, 1978

**Mr. Sylvan M. Marshall
1825 K Street, Northwest
Washington, D.C. 20006**

Dear Mr. Marshall:

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 **(x) 690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Michael Alexander
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
SYLVAN M. MARSHALL : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1971. :

Petitioner, Sylvan M. Marshall, 1825 K Street, Northwest, Washington, D.C. 20006, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 13758).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 21, 1977 at 2:45 P.M. Petitioner appeared by Leon N. Weiss, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether a nonresident partner is liable for New York State income taxes on income attributable to New York State sources.

FINDINGS OF FACT

1. A 1971 New York State partnership return was filed in the name of Soll, Connelly & Marshall. Schedules were introduced in support of said return, on which petitioner's name appeared as having received a distribution of income from the partnership.

2. On December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioner, asserting unincorporated business tax of \$4,754.68, plus penalty and interest of \$2,240.16, for a total of \$6,994.84.

3. The basis of the State's claim is that petitioner, Sylvan M. Marshall, was a nonresident partner in the law firm of Soll, Connelly & Marshall and that as such, is liable (pursuant to the provisions of sections 632 and 637 of the Tax Law) for income tax on distribution of income which he received from the partnership.

4. The basis of petitioner's claim is that among other things, he never entered into any formal partnership agreement with respect to the firm. Petitioner claims that he permitted the use of his name merely as a courtesy and convenience to the attorneys in New York, to whom he referred legal matters from time to time.

5. The income in question was paid to the New York firm for services rendered by petitioner in Washington, D.C.

6. The Income Tax Bureau contends that the use of petitioner's name on the firm's letterhead is the equivalent of petitioner holding himself out as a partner and that the general public would be justified in assuming that petitioner was a partner in the firm.

CONCLUSIONS OF LAW

A. That petitioner, Sylvan M. Marshall, was a nonresident partner in the firm of Soll, Connelly & Marshall and that as such, is liable for personal income tax on income derived from New York sources, within the meaning and intent of sections 632 and 637 of the Tax Law.

B. That no formal partnership agreement is necessary and that the referral of clients from the Washington, D.C. firm to the New York firm (and vice versa) is an indicia of the existence of a partnership when considered in light of other surrounding circumstances, especially the personal relationships of the individuals involved.

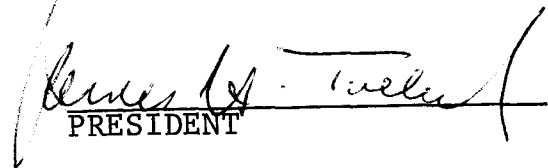
C. That the petition of Sylvan M. Marshall is denied and

the Notice of Deficiency issued December 22, 1975 is sustained,
together with such penalties and interest as may be lawfully
owing.

DATED: Albany, New York

December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER