

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph M. & Mary P. Logan :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1969. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

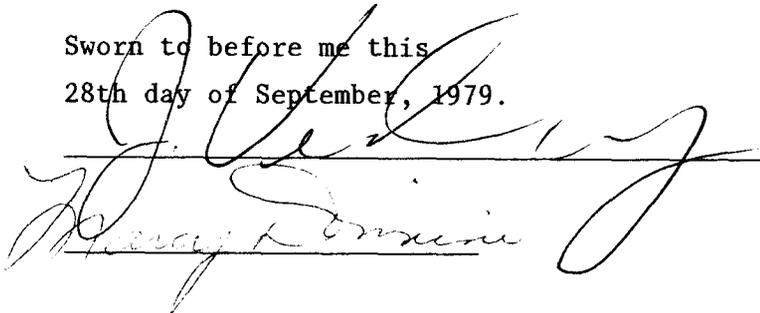
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Joseph M. & Mary P. Logan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph M. & Mary P. Logan
635 10th St.
Brooklyn, NY 11215

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.



A large, stylized handwritten signature in cursive script, likely belonging to Jay Vredenburg, is written over a horizontal line. The signature is written in dark ink and is quite fluid and expressive.

STATE OF NEW YORK
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Joseph M. & Mary P. Logan :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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State of New York
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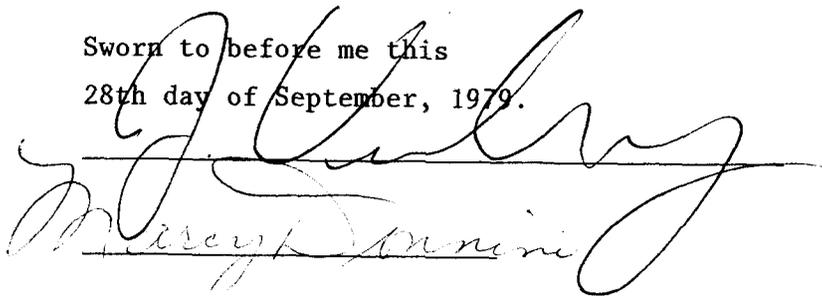
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Julius Simon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Julius Simon
S. M. Ward Co.
386 Park Ave. S.
New York, NY 10016

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
28th day of September, 1979.



Mary P. Logan

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Joseph M. & Mary P. Logan
635 10th St.
Brooklyn, NY 11215

Dear Mr. & Mrs. Logan:

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(s) 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,



cc: Petitioner's Representative
Julius Simon
S. M. Ward Co.
386 Park Ave. S.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH M. LOGAN and MARY P. LOGAN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1969. :
:

Petitioners, Joseph M. and Mary P. Logan, 635 10th Street, Brooklyn, New York 11215, 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 1969 (File No. 00484).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1978 at 1:15 P.M. Petitioners appeared by Julius Simon, accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the entire distributive share of partnership income received by petitioner Joseph M. Logan was taxable by New York State.

FINDINGS OF FACT

1. Petitioners, Joseph M. and Mary P. Logan, filed a joint New York State Income Tax Resident Return for the period September 1, 1969 through December 31, 1969. Petitioner Joseph M. Logan reported salary income which had accrued during said period from Wood, Struthers & Winthrop, Inc., a brokerage firm located in New York City. Said petitioner was a general partner of Wood, Struthers & Winthrop, a partnership which carried on business within and without New York State.

2. A Consent Fixing Period of Limitation Upon Assessment of Personal Income Tax was properly signed and executed for 1969, in accordance with section 683(c)(2) of the Tax Law.

3. As a result of an audit of the partnership of Wood, Struthers & Winthrop, the Income Tax Bureau determined that petitioner Joseph M. Logan was a general partner, and that the amount received by him in the form of salary was a distribution of partnership income. On January 27, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, asserting personal income tax of \$2,087.19, plus interest of \$598.96, for a sum of \$2,686.15. Said Notice was the result of a field audit adjustment whereby petitioner Joseph M. Logan's total distributive share of partnership income was deemed taxable by New York State; however, the corrected New York taxable income of said petitioner was understated, in that the New York wage income of \$8,750.00 was omitted. The computations of the partnership audit and the resultant deficiency were not challenged by petitioner and are not at issue.

4. Petitioners were residents of New York State until August 1, 1968, when they moved to California and remained there until September 1, 1969, at which time they returned to New York State.

5. While in California, petitioner Joseph M. Logan was the "resident partner" in charge of the Los Angeles branch office of Wood, Struthers & Winthrop.

6. Petitioner Joseph M. Logan was listed as a general partner in the partnership agreement dated February 1, 1968. Said agreement indicated the amount of his capital contribution, as well as his right to vote on partnership matters and to share in the profits and losses of the partnership.

7. Petitioner Joseph M. Logan contended that he was not a partner, but rather an employee who rendered services for which he was paid a salary.

8. The partnership of Wood, Struthers & Winthrop reported profits and losses on a calendar-year basis.

CONCLUSIONS OF LAW

A. That petitioner Joseph M. Logan was a New York State resident at the time the partnership year ended; therefore, his entire distributive share of partnership income is taxable. When a member of a partnership changes his status from nonresident to resident, his distributive share of partnership income must be included in the computation of his taxable income for the portion of the taxable year in which the taxable year of the partnership ends, in accordance with the meaning and intent of section 654(b) of the Tax Law and 20 NYCRR 148.6.

B. That petitioners are not liable for any additional tax as a result of the omission of wage income stated in Finding of Fact "3", since a claim was not asserted at or before the hearing, pursuant to section 689(d) of the Tax Law.

C. That the petition of Joseph M. and Mary P. Logan is denied and the Notice of Deficiency issued January 27, 1975 for \$2,686.15 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

A handwritten signature in black ink, appearing to read "James G. ...", written over a horizontal line.

PRESIDENT

A handwritten signature in black ink, appearing to read "Milton K...", written over a horizontal line.

COMMISSIONER

A handwritten signature in black ink, appearing to read "...", written over a horizontal line.

COMMISSIONER