

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Charles M. & Anne M. Browne :

AFFIDAVIT OF MAILING

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 1972. :

State of New York

County of Albany

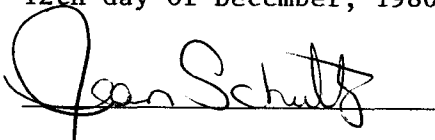
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Charles M. & Anne M. Browne, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

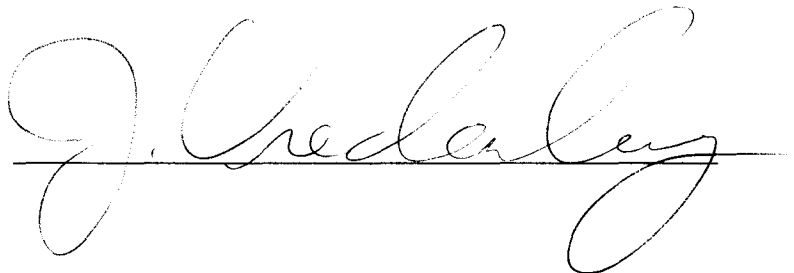
Charles M. & Anne M. Browne
9006 Redwood Rd.
Redmond, WA 98052

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
12th day of December, 1980.


Jean Schultz


Jay Vredenburg

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

December 12, 1980

Charles M. & Anne M. Browne
9006 Redwood Rd.
Redmond, WA 98052

Dear Mr. & Mrs. Browne:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

CHARLES M. BROWNE and ANNE M. BROWNE :

DECISION

for Redetermination of a Deficiency :
or for Refund of Personal Income
Taxes under Article 22 of the Tax Law :
for the Year 1972.

Petitioners, Charles M. Browne and Anne M. Browne, 9006 Redwood Road, Redmond, Washington 98052, 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 1972 (File No. 16047).

On February 15, 1980, petitioners, Charles M. Browne and Anne M. Browne, advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file.

ISSUE

I. Whether gain realized from a lump sum distribution of a profit sharing plan together with a bonus received by nonresident petitioner Charles M. Browne was properly allocated to New York.

II. Whether distribution from the profit sharing plan qualified as an annuity.

FINDINGS OF FACT

1. Petitioners, Charles M. Browne and Anne M. Browne, filed a New York State Income Tax Nonresident Return for 1972. On said return, petitioner Charles M. Browne allocated a lump sum distribution from his interest in a deferred profit sharing plan, and a bonus from his former employer, on the basis of days worked within and without New York State for his new employer.

2. On March 29, 1976, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$114.55, plus interest of \$44.14, for a total of \$158.69. The Notice was issued on the grounds that petitioner Charles M. Browne did not perform any services for his former employer, Kurt Salmon Associates, in 1972, and, therefore, the lump sum distribution and bonus received in 1972 was required to be allocated on the same basis as his 1971 earnings. In addition, as a result of petitioners failure to reply to the Audit Division correspondence, the entire amount reported by them as "Other Income" was deemed to be derived from sources entirely within New York State.

3. Petitioners' income allocated to New York State for subject year was recomputed on the basis of information subsequently submitted by them as follows:

SCHEDULE 1

	<u>FEDERAL</u>	<u>STATE</u>
Wage income - BVD Services	\$15,057.82	\$ 7,475.00
Wage income - Miller Bros	14,717.92	-0-
Wage income - Kurt Salmon Assoc	2,093.12	927.00
Interest income	13.00	-0-
Pension income - Kurt Salmon (see Sch 2)	6,262.00	2,725.00
State tax refund	1,020.00	-0-
Ordinary income - Kurt Salmon (see Sch 2)	1,056.00	460.00
Business expenses - BVD (7475 X 14.58)	[14.58]	[7.24]
	<u>15058</u>	
Business expenses - Miller Bros (360.00 - 14.58)	[345.42]	-0-
Total income	\$39,859.86	\$11,579.76
Less: state tax refunds	[1,020.00]	-0-
Add : 20% modification (20% x 6,262.00)	1,252.00	
(20% x 2,725.00)		545.00
Total N.Y. income	\$40,091.86	\$12,124.76
Less: itemized deductions 12,124.76 x 8,948.00		[2,706.09]
	<u>40,091.86</u>	
exemptions		[2,600.00]
Taxable income		\$ 6,818.67
Tax		\$ 250.93
Surcharge		6.27
Total tax		\$ 257.20
Tax due per return		\$ 168.00
Tax due		\$ 89.20

SCHEDULE 2

Summary of Federal wage income and N.Y.S. wage income earned in 1969, 1970 and 1971 from Kurt Salmon Assoc.

<u>YEAR</u>	<u>ALLOCATION FACTOR</u>	<u>FEDERAL WAGES</u>	<u>STATE WAGES</u>
1969	127/232	\$23,971.00	\$13,136.00
1970	79/239	27,552.00	9,092.00
1971	105/237	<u>25,246.00</u>	<u>11,184.00</u>
TOTAL		<u>\$76,769.00</u>	<u>\$33,412.00</u>

Allocation of pension income - $\frac{33,412}{76,769} \times 6,262.00 = \$2,725.00$

Allocation of ordinary income portion of lump sum distribution $\frac{33,412}{76,769} \times 1,056.00 = \460.00

4. Petitioners contended that the Audit Division's method of allocation of the lump sum distribution and bonus failed to give consideration to the fact that the greater part of the appreciation in the profit sharing plan occurred during the years when petitioner Charles M. Browne had no nexus with New York State.

5. Petitioners failed to submit evidence to show wherein the method for allocation provided for under 20 NYCRR 131.18(a) was unfair or inadequate.

Further, petitioners failed to submit an alternative method of apportionment and allocation with respect to the deferred profit sharing plan.

6. Petitioners further contended that the distribution received from the profit sharing plan qualified as an annuity.

CONCLUSIONS OF LAW

A. That the gain realized from the lump sum distribution of a profit sharing plan together with a bonus received by petitioner Charles M. Browne from his former employer for subject year is attributable to services rendered within and without New York State. That the allocation formula adopted by the Audit Division in determining the portion attributable to New York State conformed and complied with the requirements of 20 NYCRR 131.18(a).

B. That the lump sum distribution of a profit sharing plan received by petitioner Charles M. Browne, does not qualify as an annuity as it was not payable at regular intervals at least annually, for the life of the individual receiving it [20 NYCRR 131.4(d) (2) (B)].

C. That the petition of Charles M. Browne and Anne M. Browne is granted to the extent determined in Finding of Fact "3", supra. The Audit Division is hereby directed to modify the Notice of Deficiency issued on March 29, 1976; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER