

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

CECIL G. & FREDA RAMSAY

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(~~x~~) 22 of the  
Tax Law for the (Year(~~x~~) 1960

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Margaret Wood, 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 10th day of March, 1970, she served the within  
Notice of Decision (~~for Redetermination~~) by (certified) mail upon Cecil G. &  
Freda Ramsay (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Cecil G. & Freda Ramsay  
1415 Keyes Avenue  
Schenectady, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~)  
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

10th day of March, 1970.

*James Wright*

*Margaret Wood*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CECIL G. & FRED A RAMSAY

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(22) 22 of the  
Tax Law for the (Year(1960) 1960

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Margaret Wood, 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 10th day of March, 1970, she served the within  
Notice of Decision (~~for Determination~~) by (certified) mail upon Joseph  
Cohen, C. P. A. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joseph Cohen, C.P.A.  
1026 State Street  
Schenectady, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

10th day of March, 1970.

James Wright

Margaret Wood

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE PETITIONS :  
OF :  
CECIL G. AND FRED A RAMSEY :  
FOR A REDETERMINATION OF A DEFICIENCY : DECISION  
OR FOR REFUND OF PERSONAL INCOME TAXES :  
UNDER ARTICLE 22 OF THE TAX LAW FOR THE :  
YEAR 1960 :  
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Cecil G. and Freda Ramsey, the petitioners herein, having filed petitions for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1960, and a hearing having been held at the offices of the State Tax Commission, State Campus, Albany, New York, on June 2, 1965, before Francis X. Boylan, Hearing Officer, and the petitioners having been represented by Joseph Cohen, C. P. A., of Schenectady, New York, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notices of additional assessment, Nos. B986484 and B986485, both dated October 27, 1961, the Department of Taxation and Finance disallowed a modification made by taxpayers in their New York combined separate personal income tax returns as residents for the year 1960, whereby the taxpayers subtracted the respective amounts of \$1,073.75 and \$1,540.28 from the amount of the federal adjusted gross income brought over to their New York State tax returns. In their related federal joint income tax return for 1960, they had reported the federal adjusted gross income at \$24,207.38, and this amount was brought over to the New York returns in the same total, but in the several amounts of \$18,927.73 for the husband and \$5,279.65 for the wife, before the two subtractions which were disallowed. On disallowing

the subtractions, the Department made additional assessments in the amount of \$96.64 against Cecil Ramsey, and \$55.46 against Freda Ramsey.

(2) Taxpayers held shares in two British corporations and as a required condition of their taking a federal tax credit for foreign income taxes paid to the United Kingdom, the petitioners, in their federal return, had reported certain "taxes appropriate" to the dividends, which taxes were prepaid by the corporations, together with the dividends actually received, as income from dividends. The tax credit was allowed pursuant to a 1946 Convention or treaty with the United Kingdom, as amended, which in effect stipulated that the said prepaid taxes were to be regarded for the purpose of the federal tax credit as having been paid by the shareholders. As of 1960, the relevant provision read:

"Article XIII

"(1) Subject to Sections 901 to 905 of the United States Internal Revenue Code as in effect on the 1st day of January, 1956, United Kingdom tax shall be allowed as a credit against United States tax. For this purpose:

"(a) The recipient of a dividend paid by a corporation which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom tax appropriate to such dividends, and

"(b) The recipient of any royalty . . . .

"if the recipient of a dividend or royalty or other amount, as the case may be, elects to include in his gross income for the purposes of United States tax the amount of such United Kingdom income tax."

Consequently, for purposes of the federal credit procedure, the amount of the prepaid taxes constituted at once an expenditure for taxes made by the petitioners and a reciprocal receipt of additional income in the same amount by them, as if the corporation had paid the petitioners the amount of the taxes and the petitioners had then paid the taxes.

(3) For other federal income tax purposes unrelated to this federal tax credit pursuant to the treaty, the prepaid taxes on the dividends would not have been regarded as having been paid by the petitioners under governing case law, but as paid by the corporations in their own behalf, and this amount would not have constituted either an expenditure by the petitioners or a receipt of this amount; and had petitioners elected not to claim the credit taken pursuant to the treaty, they lawfully but with less financial advantage on their federal return could have reported (under Internal Revenue Code Section 862(a)) only the actual dividends received, not including the prepaid taxes appropriate to them; and then the federal adjusted gross income figure, which is to be brought over to the State return, would have been less by the amount of such taxes, and, no federal deduction of taxes or any deduction having been taken, would have remained so after all required New York modifications.

The taxpayers attempted to bring about this result by subtracting from the aggregate amount of the federal gross income figure brought over, the amounts stated (in paragraph (1) above), equal to the amount of the prepaid taxes, \$2,614.03, attributed to them in the federal adjusted gross income figure as such additional receipt of dividend income. This asserted modification, as has been stated in paragraph (1) above, was disallowed.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DECIDES:

(A) That the expenditure attributed to petitioners for purposes of the federal credit as their payment of United Kingdom income taxes in the amount of the taxes appropriate to dividends which

were prepaid to the United Kingdom by the British corporations, and which are held at law for other federal income tax purposes to have been taxes imposed on the corporations rather than the shareholders, are not petitioners' taxes within the meaning of the word in Article 22 of the Tax Law, which contemplates taxes which have been really paid, directly or indirectly, by the taxpayer, and so held in law, for the purposes of federal income taxes generally.

Although foreign-nation income taxes really so paid by a taxpayer would not be subtractible from the federal adjusted gross income figure brought over to the New York return, either as taxes or as expenses, the said amount here only attributed to petitioners as an expenditure for taxes is subtractible as "expenses" under Tax Law Section 612(c)(10) which provides that ordinary and necessary expenses paid or incurred during the taxable year for the production of income which is subject to tax under Article 22, but exempt from federal income tax, may be so subtracted.

The attributed expenditure is to be regarded as the petitioners' expense for purposes of Article 22, since it gave rise to the reciprocal added income from dividends attributed to petitioners in the same amount which is included in the federal adjusted gross income brought over.

The attributed additional income (the amount of the prepaid dividends considered as a receipt) is equivalently "exempt" from federal income tax when a federal credit for the tax expenditure in the same amount is elected, and the credit (like an exemption proper which precludes taking federal deductions of expenses related to the exempt income) precludes a taxpayer's taking the expenditures for taxes, which is the subject of the federal credit, as a federal

deduction as well. So the attributed additional dividend income is equivalently "exempt from federal tax" within the meaning intended. (That such deduction would not be let stand in New York if it were one of taxes really imposed on the taxpayer does not affect the question whether the federal credit is not equivalently a federal exemption.)

(B) That, accordingly, the modifications made by the petitioners in their returns as stated in paragraph (1) above, whereby they subtracted the stated amounts from the federal adjusted gross income brought over, should be allowed as subtractible expenses under Tax Law Section 612(c)(10), it is held.

(C) That the additional assessments set forth in paragraph (1) above accordingly are cancelled in full.

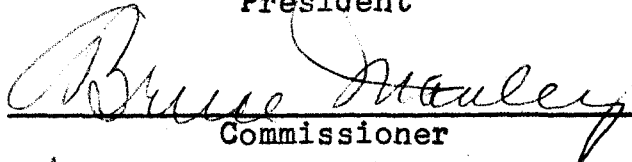
And it is so ORDERED.

Dated: Albany, New York this  
9<sup>th</sup> day of March, 1970  
~~1968~~.

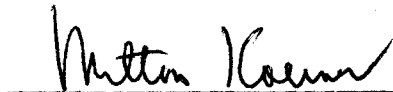
STATE TAX COMMISSION



President



Commissioner



Commissioner