

STATE OF NEW YORK
STATE TAX COMMISSION

Edgell Jr., George H.
Personal Income
Article 16

In the Matter of the Petition

of

George H. Edgell, Jr.

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1956, 1957 & 1959

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

State of New York
County of Albany

Martha Funaro , 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 14th day of January , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon George H. Edgell, Jr. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Renato Beghe, Esq.
Carter, Ledyard & Milburn, Esqs.
2 Wall Street
New York, New York 10005

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

14th day of January , 1971

Joyce S. Santillo

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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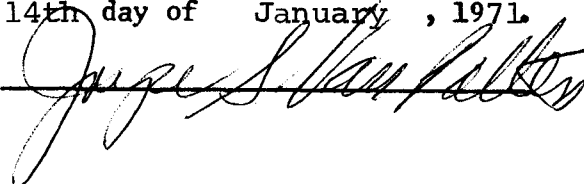
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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
GEORGE H. EDGELL, Jr. :
for Revision or Refund of Personal : DETERMINATION
Income Taxes under Article 16 of the :
Tax Law for the Years 1956, 1957, and :
1959. :

George H. Edgell, Jr., made application for revision or refund of personal income taxes under Article 16 of the Tax Law for the Years 1956, 1957 and 1959. A formal hearing was held at the offices of the State Tax Commission, in the City of New York on September 25, 1968. The taxpayer was represented by Messrs. Canter, Ledyard & Milburn, Attorneys at Law (Renato Beghe, Esq., of Counsel).

FINDINGS OF FACT

1. On April 12, 1967, taxpayer filed New York State Income Tax Resident Returns for the years 1956, 1957 and 1959. For each year taxpayer also claimed resident credits for taxes paid to the State of New Hampshire on dividend and interest income received as follows:

<u>Year</u>	<u>Credit Claimed</u>
1956	\$2,358.62
1957	\$2,487.44
1959	\$3,067.73

2. On May 26, 1967, the Income Tax Bureau issued assessments as follows:

<u>Year</u>	<u>Assessment Number</u>	<u>Total</u>
1956	61539A	\$2,358.62
1957	61539B	\$2,487.44
1959	61539C	\$3,148.26

The 1956 and 1957 assessments were based upon a disallowance of credit claimed for taxes paid to the State of New Hampshire. The 1959 assessment, besides being based upon a disallowance of the claimed credit,

also carried an additional assessment of \$80.53 for understatement of income.

3. On June 14, 1967, taxpayer filed applications for revision or refund for the years 1956, 1957 and 1959. The application was denied by the Income Tax Bureau and a demand for hearing was timely filed.

4. During the years in question taxpayer was a resident of New York because he spent more than 183 days in this state and maintained a three room apartment in New York City. His domicile, however, was in the State of New Hampshire.

5. During this period, taxpayer derived all of his income from intangibles, primarily as beneficiary of trusts administered by Mercantile Safe-Deposit and Trust Company of Baltimore, Maryland, as trustee under trusts created by others for his benefit, and by the United States Trust Company of New York, as trustee of a revocable trust which the taxpayer created for his own benefit.

6. Taxpayer was subject to and paid income taxes pursuant to New Hampshire law on the income derived from the intangibles referred to above. Taxpayer claims that pursuant to Section 363(2) of the Tax Law he should be allowed a credit against New York State tax liability for taxes paid to New Hampshire based upon income from these intangibles.

7. Section 363(2) provides, in part, that: "If any taxpayer who is a resident of the state has become liable to income tax to another state upon income ... derived from sources within such state and subject to taxation under this article, the tax commission shall credit the amount of income taxes payable by him under this article .."

The term "income ... derived from sources within such state" restricts the resident credit to the tax on income derived from sources within the other state. The resident credit is allowable in relation to compensation for personal services performed in the other state,

income from business, trade or profession earned in the other state, and income from the ownership of real or tangible personal property in the other state. On the other hand, the resident credit does not apply in respect to the tax upon income from intangibles, except where such income is from property employed in a business or profession carried on in the other state. Such is not the case here.

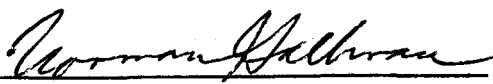
DETERMINATION

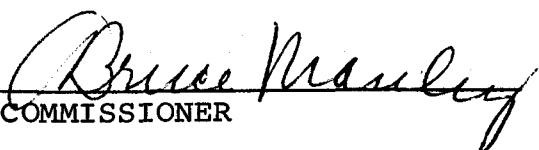
- A. The tax credit claimed is disallowed.
- B. The application for Revision or Refund is denied and the assessments are sustained.

DATED: Albany, New York

January 13, 1971.

STATE TAX COMMISSION


COMMISSIONER


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COMMISSIONER