

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT T. & ELFRIDA FELLOWS

For a Redetermination of a Deficiency or
a Refund of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the (Year(s) 1965 :

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

State of New York
County of Albany

Lynn Wilson , 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 6th day of April , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon ALBERT T. &
ELFRIDA FELLOWS (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Albert T. and Elfrida Fellows
Willow, New York 12495

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

6th day of April , 19 72

Rae Zimmerman

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 6, 1972

Albert T. and Elfrida Fellows
Willow, New York 12495

Dear Sir and Madam:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
690 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ALBERT T. & ELFRIDA FELLOWS	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
year 1965.	:	

Albert T. and Elfrida R. Fellows petitioned for a redetermination of personal income taxes for the year 1965 under Article 22 of the Tax Law. A formal hearing was held at the offices of the State Tax Commission, Albany, New York, on October 21, 1970, before L. Robert Leisner, Hearing Officer.

Albert T. Fellows appeared personally on behalf of the petitioners. The Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Are petitioners entitled to a credit against their 1965 New York State income tax for foreign taxes withheld against foreign dividends?

II. Are petitioners entitled to a deduction from their New York income of foreign taxes withheld against foreign dividends?

FINDINGS OF FACT

1. A Notice of Deficiency for 1965 income taxes was issued on April 10, 1967, under File No. 46088808 and the taxpayers timely petitioned for a formal hearing. The taxpayers had deducted a \$276.76 foreign income tax as a credit against their New York State

income tax.

2. The Income Tax Bureau contend that no provision exists under New York State law to allow "Income Tax Credit: credit for income tax paid on dividends from foreign companies," and that the tax paid to foreign countries was not otherwise deductible.

3. The petitioners contend first that because the New York State instructions, page 3 allowed a credit for "the income tax of another state" as did the form IT IR R (11/67) "Claim for Resident Tax Credit." The taxpayer in his petition and at the hearing contended that "state" included foreign countries and cited many examples of this usage.

4. Petitioners further contended that the foreign tax deducted and paid on the dividends was a deductible item and they should be taxed only on the amount actually received.

CONCLUSIONS OF LAW

A. Any ambiguity or misunderstanding created by the instructions is clarified by the words of section 620(a) of the Tax Law which permits credits for income taxes of another state. "A resident shall be allowed a credit against the tax otherwise due under this article for any tax imposed for the taxable year by another state of the United States---" The Tax Law only permits a credit for income taxes paid to another state of the United States. Petitioner may not take credit for taxes paid to states that are not states of the United States.

B. Foreign tax withheld and paid on the dividends is not a deductible item. This modification of federal adjusted gross income is not authorized by the Tax Law. The withheld tax is not a federal

deduction from income and does not enter into the computation of federal adjusted gross income.

C. Petitioners are not entitled to a tax credit of \$276.76 for taxes paid to foreign companies.

D. Petitioners are not entitled to a deduction of \$276.76 as ordinary and necessary expenses incurred in the production of income.

E. The proposed deficiency for 1965 herein is sustained.

F. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

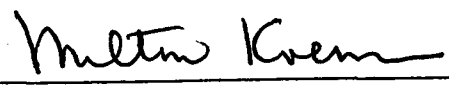
DATED: Albany, New York

April 6, 1972.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER