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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RALPH G. HENDERSON

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) 1955, 1956, 1957 and 1959.

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 11th day of July, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon RALPH G. HENDERSON (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Ralph G. Henderson
9 Bayview Wood
Toronto 12, Ontario, Canada

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
11th day of July, 1972.

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 11, 1972

Mr. Ralph G. Henderson
9 Bayview Wood
Toronto 12, Ontario, Canada

Dear Mr. Henderson:

Please take notice of the DETERMINATION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 375 of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 90 days from 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 relative hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

L. Robert Leisner

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
RALPH G. HENDERSON	:	DETERMINATION
for a Revision or for Refund of Personal Income Taxes under Article 16 of the Tax Law for the Years 1955, 1956, 1957 and 1959.	:	

Ralph G. Henderson applied for a revision of personal income taxes under Article 16 of the Tax Law for the years 1955, 1956, 1957 and 1959.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York on June 22, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer appeared personally and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Were payments to the partners, characterized as interest and salary, part of their distributive shares or deductions from profits?

II. Did the taxpayer show any error in the ratio allocated for partner's income to total partnership income, or the partner's share of total partnership income?

III. Did the taxpayer show that the allocation basis should consider salary as an expense of the Canadian branch?

FINDINGS OF FACT

1. Petitioner, Ralph G. Henderson, timely filed New York State income tax returns for the years 1955, 1956, 1957 and 1959.

2. A Notice of Additional Assessment in income tax for the year 1955 was issued on April 15, 1959 under File No. FA81773, and

for the years 1956, 1957 and 1959, March 27, 1968, under File No. FA4505, against Ralph G. Henderson.

3. The taxpayer applied for redetermination of the deficiencies.

4. The taxpayer was a partner of Bache and Company and operated the Toronto office of Bache and Co.

5. The partnership agreement provided that the taxpayer should receive interest on his capital and a certain salary for running the Toronto office.

5. The taxpayer contended that the amounts paid under the agreement as salary and interest were not part of his distributive share of profits. The taxpayer also contended that this would also affect the ratio of his income to total partnership income. The taxpayer also contended that his salary should be an expense of the Canadian branch. The taxpayer also contended that a Federal Tax Treaty respecting Federal taxes was controlling in the computation of State income and tax.

CONCLUSIONS OF LAW

A. Amounts paid as interest and salary to a partner pursuant to a partnership agreement constitute a part of the partner's distributive share of profits.

B. The taxpayer's receipt of money as a partner characterized as interest and salary, does not reduce his distributive share.

C. Outwater v. Bates, 273 App. Div. 925 supports the Notice of Assessment. In determining the sources of a nonresident partner's income no effect should be given to a provision in the partnership agreement which (1) characterizes payments to the partner as being for services or for the use of capital, or (2) allocates to the partner as income from sources outside New York a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside New York to partnership income or gain from all sources.

D. The Federal Tax Treaty deals explicitly with Federal income tax and not State income taxes.

E. The determination of the deficiencies is sustained.

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

DATED: Albany, New York
July 11, 1972

STATE TAX COMMISSION

Norman Gardner
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER