

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY & SHIRLEY A. KRITZIK

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) 1967

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, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon STANLEY & SHIRLEY A. KRITZIK (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Stanley & Shirley A. Kritzik
1530 West Cedar Lane
Milwaukee, Wisconsin 53217
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, 1972

Ral Zimmerman

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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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 EMIL SEBETIC,
ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Emil Sebetic, Esq.

233 Broadway
New York, New York 10007

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

Stanley & Shirley A. Kritsik
1530 West Cedar Lane
Milwaukee, Wisconsin 53217

Dear Sir & 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 :
STANLEY & SHIRLEY A. KRITZIK : DECISION
for a Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year 1967. :

Stanley and Shirley A. Kritzik petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1967.

The case was submitted on a stipulation of facts. The taxpayer was represented by Emil Sebetic, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq.

ISSUES

I. Did the taxpayers become nonresidents when they moved from New York State on July 27, 1967?

II. Could the taxpayers' losses from partnerships whose tax year ended on December 31, 1967, be prorated on a monthly basis throughout the year?

FINDINGS OF FACT

1. At the time of the filing of the petition herein, the petitioners, husband and wife, resided at 1530 West Cedar Lane, Milwaukee, Wisconsin 53217.

2. On or before April 15, 1968, the petitioners filed a joint federal income tax return for the taxable year 1967.

3. On or before April 15, 1968, the petitioners filed a New York State income tax resident return (Form IT-201) for the portion of the taxable year from January 1, 1967 to July 26, 1967.

4. On or before April 15, 1968, the petitioners filed with the New York State Department of Taxation and Finance a New York State income tax nonresident return (Form It-203) for the portion of the taxable year 1967 from July 26, 1967 to December 31, 1967.

5. On or about May 5, 1969, the Department of Taxation and Finance mailed to the petitioners a notice of proposed audit changes with respect to the income tax returns filed by the petitioners with the Department for the taxable year 1967, in which it was determined that the New York taxable income of the petitioners during the period they were residents was \$144,072.00 and that they had no New York taxable income for the period during which they were nonresidents.

6. On September 11, 1969, petitioners mailed to the Department of Taxation and Finance a protest with respect to the proposed adjustments. The Department subsequently concluded that the proposed audit changes were correct.

7. On June 15, 1970, the Department issued a final Notice of Deficiency under File No. 89202601, determining that a deficiency was due from the petitioners for the taxable year 1967 in the amount of \$6,634.62, plus interest in the amount of \$862.50, making a total of \$7,497.12.

8. On or about September 9, 1970, the petitioners filed with the State Tax Commission a petition for redetermination of the deficiency determined for the taxable year 1967. A refund was also requested.

9. On January 1, 1967, the petitioners were domiciled in New York State. They lived in a leased apartment in New York City, and petitioner, Stanley Kritzik, was employed at the New York City office of International Business Machines Co. (IBM). The petitioners continued to live in a New York City leased apartment until July 27, 1967, when they changed their residence to Connecticut. Stanley Kritzik's place of employment was changed at the same time from the New York office to the Armonk, New York, office of IBM, and the change in residence was motivated by the transfer of his place of employment. The petitioners did not vote in Connecticut. On November 15, 1967, Stanley Kritzik changed his employment from IBM to a Milwaukee, Wisconsin firm, and the petitioners accordingly moved to Wisconsin. They did not vote or change the registration of their automobile or their drivers' licenses in Wisconsin until after the end of the taxable year 1967.

10. The Income Tax Bureau has determined that the taxpayers became nonresidents when they moved from New York State on July 27, 1967.

11. The itemized deductions taken by the petitioners in their federal income tax return for 1967 consisted of charitable contributions of \$10,124.00, taxes of \$9,441.00 (of which \$8,090.00 were New York State and local income taxes), interest expense of \$18,363.00, and miscellaneous deductions of \$2,430.00 (of which investment services expense amounted to \$1,859.00, travel in connection with investment \$43.00, and transfer taxes on security sales, \$213.00) making a total of \$40,358.00. The charitable contributions and the interest expense items of \$10,124.00 and \$18,363.00, respectively, were paid by the petitioner, Stanley Kritzik, prior to his move to Connecticut

on July 27, 1967. Three hundred and fifteen dollars of the \$1,351.00 tax items (\$9,441.00 less the \$8,090.00 of income taxes) were paid by the petitioners during the residence period, and \$2,115.00 of the miscellaneous deductions of \$2,430.00 were paid during the residence period (investment services \$1,859.00, travel in connection with investments, \$43.00, and transfer taxes on security sales, \$213.00).

12. The petitioners' adjusted gross income for 1967 as reported in their 1967 federal income tax return includes interest on U.S. bonds of \$5,736.00 as part of the total interest received of \$14,351.00. The petitioners reported in their New York State resident return for 1967, interest of \$8,372.00 out of the total interest of \$14,351.00 as having accrued during the residence period. The \$8,372.00 item of interest includes \$3,340.00 of interest on U.S. bonds (7/12ths of \$5,736.00) as the amount that accrued during the seven month resident period.

13. The parties have agreed that U.S. bond interest is not taxable and have agreed on prorated figures for the income and deductions listed in the two preceding paragraphs pursuant to section 654 of the Tax Law.

14. The petitioner, Stanley Kritzik, was a member of six partnerships during the taxable year 1967, none of which did business in the State of New York. His distributive share of the partnership income of one of them, The Wednesday Co., was \$353.00. The taxable year of The Wednesday Co. ended before July 27, 1967. The remaining five partnerships all suffered losses during 1967. The taxable year of these five partnerships ended on December 31, 1967. His distributive

share of the ordinary losses of these partnerships and the names of partnerships all of which were engaged in the real estate business, are as follows:

Port Investment Associates, Milwaukee, Wisconsin	(\$189.18)
Jefferson Street Building, Milwaukee, Wisconsin	(\$171.63)
Fountainview Holding Co., Milwaukee, Wisconsin	(\$30,588.74)
Tehan Farm Co., Milwaukee, Wisconsin	(\$2,551.95)
Metropolitan Holding Co., Milwaukee, Wisconsin	<u>(\$82,161.88)</u>
<u>Total</u>	(\$115,663.38)

The Income Tax Bureau determined that the full distributive share of partnership income from The Wednesday Co., whose tax year ended before July 27, 1967, was required to be included in New York taxable income. The Income Tax Bureau determined that distributive shares of losses of (\$115,663.38) from the five partnerships whose tax year ended December 31, 1967, could not be used by the taxpayer as losses against his resident income. The Income Tax Bureau asserted that the distributive share of taxable income or losses from a partnership could only be recognized for the portion of the year in which the taxable year of the partnership ended.

CONCLUSIONS OF LAW

A. The exclusion of U.S. bond interest from taxable income and prorating of income and deductions as agreed by the parties are confirmed by this determination. Section 654 of the Tax Law.

B. The petitioners changed their domicile and became nonresidents of New York State on July 27, 1967.

C. The disallowance of the attempted prorating of claimed losses of (\$115,663.38), of the five partnerships whose tax year ended on December 31, 1967, is sustained. N.Y. State Income Tax Regulation, Section 148.6; 20 NYCRR 148.6.

D. The claim for refund is denied.

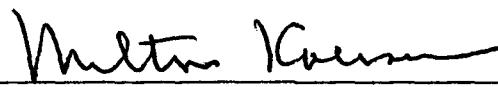
E. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
April 6, 1972.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER