

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH STATZ & KATHERINE L. STATZ

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 2nd day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon JOSEPH STATZ & KATHERINE L. STATZ (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joseph and Katherine L. Statz
Kent Island Estates
Stevensville, Maryland 21666
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

2nd day of March, 1972.

Ral 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
March 2, 1972

Joseph and Katherine L. Stats
Kent Island Estates
Stevensville, Maryland 21666

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,

Paul B. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH STATZ AND KATHERINE L. STATZ : DECISION
for Redetermination of Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year 1967. :

Petitioners, Joseph Statz and Katherine L. Statz, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1967. (File No. 89112371). A calendar call was scheduled before Hon. A. Bruce Manley, State Tax Commissioner, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York for October 6, 1971, at 11:15 A.M. On October 5, 1971, petitioners waived a formal hearing and consented to the issuance of a decision without the introduction of additional evidence. The State Tax Commission renders the following decision after a review by it of the entire record contained in the file.

ISSUES

I. Were petitioners, Joseph Statz and Katherine L. Statz, residents of New York State during the period from January 1, 1967 through December 14, 1967?

II. If petitioners, Joseph Statz and Katherine L. Statz, were residents of New York State during the aforesaid period, what portion of the wages, dividends, interest and net short term capital gains received by them during the year 1967 were subject to New York State income tax?

III. If petitioners, Joseph Statz and Katherine L. Statz, were residents of New York State during the aforesaid period, was a charitable contribution made by them after they ceased to be residents deductible from their total New York income?

FINDINGS OF FACT

1. Petitioners, Joseph Statz and Katherine L. Statz, filed a New York State combined income tax return for the year 1967. On said return they stated that they were residents of New York State from January 1, 1967 to December 14, 1967. They omitted from total income on said return dividends, interest, net short term capital gains and a portion of their wages received during said year.

2. On June 30, 1969, the Income Tax Bureau issued statements of audit changes against petitioners, Joseph Statz and Katherine L. Statz, imposing additional personal income tax on all of the wages and net short term capital gains received by them during the year 1967. It also imposed additional personal income tax on 95.3% of the interest and dividend income received by them during said year. This allocation was based upon the period of residence. In accordance with the aforesaid statement of audit changes, it issued a Notice of Deficiency against petitioner, Joseph Statz, in the sum of \$718.09 and a Notice of Deficiency against petitioner, Katherine L. Statz, in the sum of \$43.97.

3. Petitioners, Joseph Statz and Katherine L. Statz, maintained and lived in an apartment located at 20 East Ninth Street, New York New York, during the period from January 1, 1967 through December 14, 1967.

4. Petitioners, Joseph Statz and Katherine L. Statz, spent more than 183 days in New York State during the period from January 1, 1967 through December 14, 1967.

5. On December 14, 1967, petitioners, Joseph Statz and Katherine Statz, gave up their New York apartment and moved their permanent residence to Maryland. The move was made upon the retirement of petitioner, Joseph Statz, as an employee of Olin Mathieson Chemical Corporation. He had been employed by the corporation in New York City for a period of approximately five years prior to his retirement.

6. Petitioners, Joseph Statz and Katherine L. Statz, donated furniture and other miscellaneous items valued at \$795.50 to Graysonville Seventh Day Adventist Church after December 14, 1967.

7. In August, 1967 petitioner, Joseph Statz, exercised stock options he held on common stock of Olin Mathieson Chemical Corp. He had acquired these stock options in 1959 prior to his employer transferring him from Maryland to New York. He realized a net short term capital gain of \$7,002.72 as a result of the exercise of the options. He sustained long term capital losses of \$971.06 as the result of the sale of other securities between January 1, 1967 and December 14, 1967. He had a net short term capital gain of \$6,031.66 as a result of the aforesaid transactions.

8. Petitioners', Joseph Statz and Katherine L. Statz, total wages for the year 1967, received from Olin Mathieson Chemical Corp. and Metropolitan Life Insurance Company, were earned prior to December 14, 1967.

9. Petitioners, Joseph Statz and Katherine L. Statz, received dividends totaling \$1,014.94 and interest totaling \$114.40 during the year 1967. The dividends were on stocks purchased by them in 1958 and 1959 while they were residents of Maryland. \$967.24 in dividends and \$109.02 in interest were allocable to New York State based upon their period of residence in the State during the year 1967.

CONCLUSIONS OF LAW

A. That since petitioners, Joseph Statz and Katherine L. Statz, maintained a permanent place of abode in New York State and spent more than 183 days in New York State between January 1, 1967 and December 14, 1967, therefore they were resident individuals during said period in accordance with the meaning and intent of section 605(a)(2) of the Tax Law.

B. That since petitioners', Joseph Statz and Katherine L. Statz, contributions to Graysonville Seventh Day Adventist Church were made after the date of their change of residence from New York State to Maryland, therefore said contributions were not deductible as against income earned in the period prior to the date of the change of residence.

C. That since all of the wages received by petitioners, Joseph Statz and Katherine L. Statz, for the year 1967 were earned prior to their change of residence from New York State to Maryland, therefore all of said wages are includible in their New York total income for said year.

D. That since all of the net short term capital gain received by petitioner, Joseph Statz, during the year 1967 resulted from sales


made prior to his change of residence from New York State to Maryland, therefore all of said gain was includible in his New York total income for said year. The fact that the stock options were granted in 1959 while he was a resident of Maryland is not relevant since it is his residence at the time of sale that determined whether the proceeds of the sale were subject to New York State income tax.

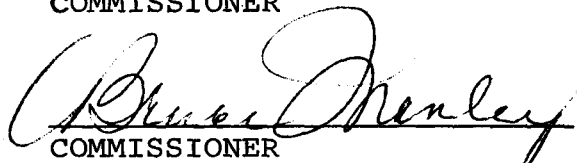
E. That the allocation of dividends and interest received by petitioners, Joseph Statz and Katherine L. Statz, during the year 1967 based upon their period of residence in New York State during said year constituted an equitable basis of allocation. The fact that the stocks from which dividends were received were purchased in 1958 and 1959 while they were residents of Maryland is not relevant, since it is their residence at the time of the receipt of the dividends that determined whether said dividends were subject to New York State income tax.

F. That the petition of Joseph Statz and Katherine L. Statz is denied and the notices of deficiency issued against them on June 30, 1969, are sustained.

DATED: Albany, New York
March 2, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER