

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER A. STROBEL

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) 1966

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 23rd day of April , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Peter A. Strobels

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Peter A. Strobels
735 The Parkway
Mamaroneck, New York 10543

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

23rd day of April , 1973

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER A. STROBEL

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) 1966

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 23rd day of April , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Louis Kaplan, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Louis Kaplan, C.P.A.
Charles M. Hecht & Co.
595 Madison Avenue
New York, New York 10022

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

23rd day of April , 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 23, 1973

Peter A. Strobel
735 The Parkway
Namaronock, New York 10543

Dear Mr. Strobel:

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

Please take further notice that pursuant to **section 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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---------------------------------------|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| PETER A. STROBEL | : | DECISION |
| for a Redetermination of a Deficiency | : | |
| or for Refund of Personal Income Tax | : | |
| under Article 22 of the Tax Law for | : | |
| the Year 1966. | : | |

Peter A. Strobel filed a petition for the redetermination of a deficiency dated January 27, 1969, in personal income tax under Article 22 of the Tax Law for the year 1966.

A hearing was held on February 7, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City before Nigel G. Wright, Hearing Officer. Petitioner was represented by Louis Kaplan, C.P.A. of Charles M. Hecht and Co. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the proper method of computing the credit given to residents under section 620 of the Tax Law for taxes imposed by another state where the other state in question, Virginia, does not allow any deduction for long term capital gains.

FINDINGS OF FACT

1. Petitioner, Peter A. Strobel, is a resident of New York. He had owned a cattle ranch in Warrentown, Virginia. He had bought it in 1950 and sold it in 1966. In 1966 as well as some past years, he had sustained an operating loss after taking allowable depreciation deductions.

2. Petitioner sold his Virginia ranch in 1966. He reported the following items on his Federal income tax return: a long term capital gain on real property and breeding cattle amounting to \$239,196.35 (against which he took a capital gain deduction of one-half thereof leaving \$119,598.17) and an ordinary loss of \$4,085.01 on farm equipment. He also deducted amounts for expenses reflecting an operating loss of \$6,439.48. Petitioner did not use the alternate tax of I.R.C. section 1201.

3. Petitioner's New York return reflected in the computation of adjusted gross income the one-half of long term capital gains of \$119,598.17 less the full amount of the loss of \$4,085.01, and the operating loss of \$6,439.48 for a net amount of \$109,073.69.

4. Petitioner reported to Virginia the full sum of the capital gains of \$239,196.35 and took deductions for the \$4,085.01 ordinary loss and the \$6,439.48 operating loss to show a net amount of \$228,671.86. Virginia allows no capital gain deduction and the full amount of the gains were taxable at the same rates as would apply to other income.

5. Petitioner paid a tax to Virginia of \$11,158.90.

6. The petitioner claimed a credit on his New York return of \$9,477.94. This was less than the tax actually paid because of the limitation of section 620(b)(1) of the Tax Law which the petitioner computed by multiplying his New York tax otherwise due by a fraction the denominator of which was his reported New York adjusted gross income of \$172,776.53 and the numerator of which was \$109,073.69 the amount of his New York adjusted gross income from Virginia sources.

7. The deficiency in issue is computed on the basis that New York had taxed only one-half of the amount of capital gains that had been fully taxable in Virginia and that the provisions of subsection (a) of section 620 required that the amount of the tax paid to Virginia be prorated between the amount of the Virginia income taxable in New York and the amount not taxable in New York. This proportion was computed as the fraction of \$109,073.69, divided by \$228,671.86 representing the net amount on the Virginia return. This results in the computation of a net tax paid to Virginia of \$5,322.57. This amount is less than the amounts which would be computed under the limitations of subsections (b)(1) and (b)(2) as those amounts would be the same as they are under the petitioner's theory of computation.

8. The deficiency in issue was dated January 27, 1969, and amounts to \$4,148.02 plus interest of \$443.71 for a total of \$4,591.73.

CONCLUSIONS OF LAW

The credit as computed by the petitioner is correct. No purpose would be served in this case by interpreting subsection (a) of section 620 in a way which limits the credit otherwise due. Any legitimate purpose of such a limitation is effectuated in any case by the provisions of subsections (b)(1) and (b)(2) of section 620. The purpose of this section is to avoid double taxation and the nature of the Virginia tax base and rate structure should make no difference to either petitioner or New York. (Compare Appeal of Bishop, California State Board of Equalization May 7, 1958,


C.C.H. California State Tax Rep. Pages 200-879).

DECISION

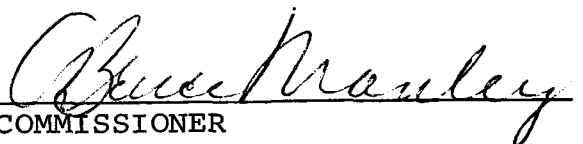
The petition is granted. The deficiency is cancelled in its entirety.

DATED: Albany, New York
April 23, 1973

STATE TAX COMMISSION



COMMISSIONER



COMMISSIONER



COMMISSIONER