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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUTH ELKIND

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

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 7th day of March, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Ruth Elkind (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

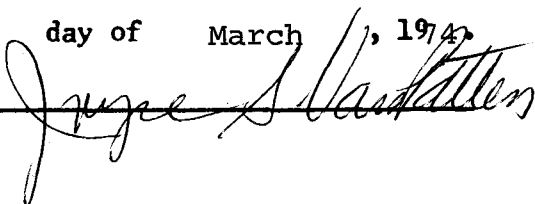
Mrs. Ruth Elkind
144 Kinderkamack Road
Westwood, New Jersey 07675

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

7th day of March, 1974





STATE OF NEW YORK
STATE TAX COMMISSION

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AFFIDAVIT OF MAILING
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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 7th day of March, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Kermit Spector, 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: Kermit Spector, C.P.A.
Kelton, Spector & Co.
393 Seventh Avenue
New York, New York
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

7th day of March, 1974.

James A. Santalena

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RUTH ELKIND
for a Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1967.

DECISION

Ruth Elkind filed a petition under section 689 of the Tax Law for a redetermination of a deficiency issued October 27, 1969 in the amount of \$683.77 plus interest of \$62.88 for a total of \$746.65 for personal income tax under Article 22 of the Tax Law for the year 1967.

In lieu of a hearing, petitioner submits her case to the Commission on the file of the Income Tax Bureau. The petitioner is represented by Kermit Spertor, C.P.A. of Kelton, Spertor & Company. Said file has been duly examined and considered.

ISSUE

The issue in this case is whether a credit for taxes paid to another state can be given to a New York resident for taxes paid by a corporation which has elected to be treated as a "Subchapter S" corporation for Federal purposes.

FINDINGS OF FACT

1. Petitioner and her husband are residents of Mount Vernon, New York. They filed a combined New York tax return in 1967. Petitioner was a stockholder in the Charlestown Mill Store, Inc., in Bennington, Vermont.

2. Charlestown Mill Store, Inc. elected to be taxed, for Federal purposes, under "Subchapter S" of the Internal Revenue Code with the result that the undistributed income of the corporation is attributed to the stockholders including petitioners, for Federal tax purposes.

3. Mr. and Mrs. Elkind had filed a joint Federal income tax return for 1967 showing total income of \$29,842.43. Of this amount, \$12,912.57 was reported as "other income" derived from Charlestown Mill Store, Inc. Mr. Elkind had received \$263.52 of this and Mrs. Elkind had received \$12,649.05.

4. Mr. and Mrs. Elkind filed an Income Tax Return (form 103) in the State of Vermont. They declared that they had Vermont source income of \$12,912.57 and calculated a tax thereon of \$771.56.

5. From information submitted by the petitioners, it appears that the State of Vermont, during 1967, had statutory provisions which were substantially similar to "Subchapter S" of the United States Internal Revenue Code. Accordingly, an electing corporation would avoid the Vermont corporate franchise tax if its shareholders included the corporations undistributed income in their own income. Where the shareholder was a nonresident of Vermont, Vermont imposed a tax on income "derived from every business...to the extent that the business...is carried on" in Vermont. By regulation 5823-1, the Vermont Commissioner of Taxes interpreted the nonresident tax to include undistributed income of a Vermont "Subchapter S" corporation.

6. Mr. and Mrs. Elkind filed a New York return. They claimed a credit thereon for the tax paid to Vermont.

CONCLUSIONS OF LAW

The credit for Vermont taxes here in question cannot be allowed.

The credit allowed New York residents by Tax Law section 620 for taxes paid to another state is only for a tax upon income "derived" from sources in other states. The source of income is determined under Regulation 20 NYCRR 121.3(d) by the rules of the New York Tax Law to determine the New York income of nonresidents of New York. Such rules state that the source of the undistributed income of a "Subchapter S" corporation is not considered to be at the location of the business (Tax Law 632(b)(4)(A); see also Ruling of State Tax Commission, May 16, 1961). It is of no consequence that petitioners worked at the corporation's place of business or that Vermont characterizes the income in question as having its source in Vermont (see appeal of Withers, California SBE Sept. 1, 1966; CCH California State Tax Reporter #203-421).

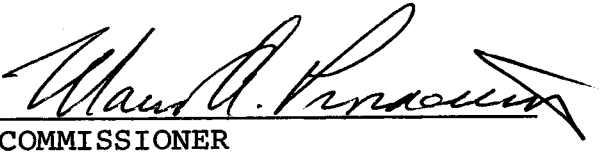
From the point of view of New York, there is no "double taxation" with respect to personal income taxes in this case which would justify a credit. New York levies not only a personal income tax, but also a franchise tax on corporations and an income tax on unincorporated business. The tax paid to Vermont in this case may be considered to be merely in lieu of ordinary corporate taxes otherwise payable there.

DECISION

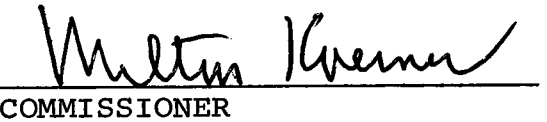
The deficiency is correct and is due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
March 7, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER