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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

**LOUIS LACHER (Deceased) AND
BESSIE LACHER**

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) **1968**

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 **30th** day of **October** , 19 **74**, she served the within Notice of Decision (or Determination) by (certified) mail upon **Bessie Lacher**

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: **Mrs. Bessie Lacher**

**3701 Jackson Street
Hollywood, Florida 33021**

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

30th day of **October** , 19**74**

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS LACHER (Deceased) AND
BESSIE LACHER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

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) 1968

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 30th day of October , 19 74, she served the within Notice of Decision (or Determination) by (certified) mail upon Donald Tescher, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Donald Tescher, Esq.
Schwartz, Nash, Heckerling & Tescher
Suite 1000 Forte Plaza
1401 Brickell Avenue, Miami, Florida 33131
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

30th day of October , 19 74

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

October 30, 1974

**Mrs. Bessie Lacher
3701 Jackson Street
Hollywood, Florida 33021**

Dear Mrs. Lacher:

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 deci-
sion must be commenced within **4 Months**
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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LOUIS LACHER (Deceased) and BESSIE LACHER	:	DECISION
	:	
for a Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1968.	:	

Louis Lacher, deceased, and Bessie Lacher filed a petition for the redetermination of a deficiency issued on March 20, 1972 in the amount of \$2,403.02 for personal income tax under Article 22 of the Tax Law for the year 1968.

A hearing was duly held at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on May 23, 1974, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Donald Tescher, Esq., of Miami, Florida. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether certain amounts received by petitioner, while a nonresident from a business partnership doing business solely in New York, can be considered as from non-New York sources by reason of the fact that it is an "annuity" as defined in Regulation 20 NYCRR 131.14.

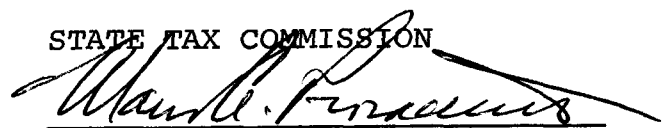
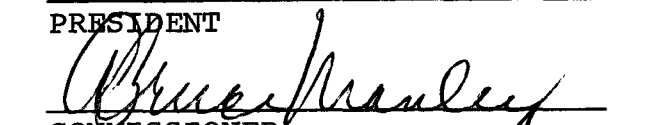
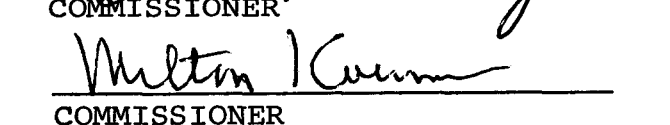
FINDINGS OF FACT

1. Petitioners had been residents of New York State until August of 1968 when they moved to Florida.
2. Louis Lacher had until 1967 been a partner of Spahr, Lacher & Berk, a firm of certified public accountants located in New York City. On February 28, 1967 and while still a New York resident, he retired from that firm.
3. Mr. Lacher had a distributive share of partnership income for the fiscal year ending February 29, 1968 amounting to \$33,724.13. These amounts were due to Mr. Lacher pursuant to the partnership agreement upon his retirement. A portion of said amount represented the accounts receivable of the firm. The other portion represented a retirement benefit computed as a stipulated portion of the retired partner's average salary and profits for the three years prior to retirement.
4. The amounts received by petitioner from the partnership was paid in money only, was payable at regular intervals over a period of at least half of his life span, was calculated by a uniform formula and was evidenced by a written instrument.

CONCLUSIONS OF LAW

The amounts received by petitioner arose from business activities in New York and is taxable in New York. The annuity rule of Regulation 20 NYCRR 131.14 applies to employees only and petitioner is not an employee.

DATED: Albany, New York
October 30, 1974

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER