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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD & MIRIAM OSTER

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) 1964 & 1965

State of New York
County of Albany

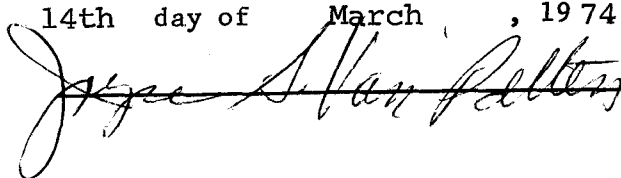
Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of March , 1974 , she served the within Notice of Decision (or Determination) by (certified) mail upon Bernard & Miriam Oster (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Bernard Oster
89-14 64th Road
Rego Park, 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

14th day of March , 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BERNARD & MIRIAM OSTER

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) 1964 & 1965

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 14th day of March, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Arthur Sachs (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Arthur Sachs
262-45 60th Road
Little Neck, 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

14th day of March, 1974,

James A. Van Patten

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
Mario A. Procaccino
~~STATE TAX COMMISSION~~, PRESIDENT

A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 14, 1974

Mr. & Mrs. Bernard Oster
89-14 64th Road
Rego Park, New York

Dear Mr. & Mrs. Oster:

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
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 :
BERNARD and MIRIAM OSTER :
for a Redetermination of a Deficiency : DECISION
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1964 and 1965. :
:

Bernard and Miriam Oster filed a petition for the redetermination of a deficiency issued under date of September 25, 1967, for personal income taxes under Article 22 of the Tax Law for the years 1964 and 1965 in the amount of \$3,336.74, plus interest of \$408.07 and a penalty with respect to estimated tax for the year 1965 in the amount of \$60.66 for a total of \$3,805.47. A payment was made of \$628.00 for 1964 and \$1,249.46 for 1965. The remaining tax and interest for 1965 has been cancelled leaving only the amount of the penalty still in issue for 1965.

In lieu of a hearing the petitioners submit their case to the Commission on the file of the Income Tax Bureau.

Mr. Arthur Sachs represents petitioner. Said file has been duly examined and considered.

ISSUE

The issue in this case is the proper amount to be allowed as a credit to a New York resident for taxes paid to New Jersey under its emergency transportation tax where there is dispute

as to whether certain income from intangibles is from property employed in a business, trade, profession or occupation in New Jersey.

FINDINGS OF FACT

1. Petitioners are residents of New York.
2. Petitioners had income during 1964 from the following sources: salary from Luxoro Construction Corporation of New Jersey; interest income from banks in New York, mortgages on New York property and mortgages on New Jersey property; partnership income from a New York firm and partnership losses from three New Jersey firms; long-term capital gains from the sale of mortgages on New York property and the sales of mortgages on New Jersey property.
3. Petitioners computed a credit on their 1964 New York return for New Jersey taxes of \$2,792.46. This credit has been reduced by the deficiency notice in issue to \$809.51. The tax originally paid to New Jersey was \$2,792.46. The New Jersey authorities recomputed the tax to be \$1,164.46 and granted petitioners a refund of \$1,628.00. Accordingly petitioners now claim that the New York credit should be \$1,164.46 or \$354.95 more than that allowed by the deficiency notice.
4. Petitioners computed their New Jersey tax and their corresponding New York credit by including their New Jersey salary of \$13,000.00, interest in the amount of \$1,434.83 on two mortgages on New Jersey property, their losses of \$16,629.72

from their partnerships located in New Jersey, one-half (\$27,014.34) their long-term gains from the sale of mortgages on New Jersey property identified as Luxoro Gardens, Independent Realty Co. and Ultra Modern Apartments, and business income of \$16,893.82 from New Jersey firms which apparently are "Subchapter S" corporations. The gross income thus computed was \$41,813.27. The tax and credit was computed to be \$2,792.46.

5. The deficiency in issue is based upon a credit for New Jersey taxes of \$809.51. This was computed on the assumption of a correct New Jersey gross income of \$19,311.33. This was arrived at by excluding from petitioners reported New Jersey income of \$41,813.27, the amount of \$22,401.94 which was attributable to business income of \$16,893.82 believed to be from "Subchapter S" corporations, interest income of \$1,434.85 and the gain on the sale of the mortgage of the Luxoro apartments in New Jersey of \$4,073.27. Still included as New Jersey income was the salary of \$13,000.00, losses from partnerships of \$16,629.72 and \$22,941.07 representing gains on the sales of mortgages of New Jersey property (Independent Realty Co. and Ultra Modern Apartments).

6. After the New York audit petitioners filed amended computations with New Jersey. The New Jersey tax authorities recomputed petitioners tax to be \$1,164.46 and granted a refund of \$1,628.00. This tax was computed on a New Jersey gross income of \$23,339.55, which was made up of the salary of \$13,000.00,

partnership losses of \$16,629.22 and \$26,969.35 representing one-half of the long-term gains received from the sale of all of the mortgages on New Jersey real estate. The New Jersey income as thus computed was more than that computed by the New York authorities by the amount of \$4,028.22 representing one-half of the gain attributable to the sale of the mortgage on Luxoro Gardens.

No evidence or explanation has been offered by petitioners as to the estimated tax penalty of \$60.66 for 1965.

Petitioners have not made any explanation or submitted any evidence as to the nature of their mortgage investments. It is also noted that the petitioners' correspondence to the New York authorities have been often tardy, have included computations, containing arithmetical errors and figures which are difficult to reconcile. In general petitioners have been haphazard in the presentation of this case.

CONCLUSIONS OF LAW

Petitioners assert that they have paid all taxes due to either New York or New Jersey and that they have been "caught in the middle between two states whose tax laws conflict."

The contrary is the case. For all purposes material here the New York and New Jersey tax laws are identical. The conflict here is that the petitioners have not been able to adequately explain whether certain income from mortgages was personal investment income taxable to New York or income from property employed

in a business in New Jersey which would be taxable to New Jersey. The burden of proof is on the taxpayer in his dispute with each state. The taxing authorities of each state can properly find against a taxpayer who does not come forward with explanations and proof. In this case in fact New York could have given less of a credit by considering the mortgages of Independent Realty Co. and Ultra Modern Apartments as not connected with a New Jersey business. Similarly, New Jersey could have computed more of a tax by including in New Jersey income the amount of the interest earned on the mortgages.

It appears that petitioners primary difficulty have been their own carelessness in the preparation of their tax returns and in the presentation of their case to both the New York and New Jersey tax authorities.

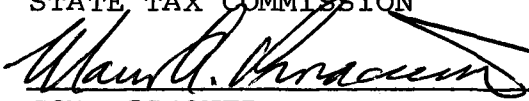
DECISION

The deficiency as to 1964 is found to be correct and except as already paid is due together with such interest as may be computed under section 684 of the Tax Law.

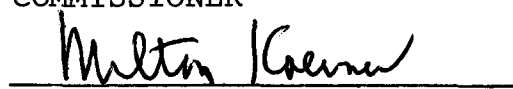
The deficiency as to 1965 is found correct but only to the extent of the penalty stated thereon for \$60.66.

DATED: Albany, New York
March 14, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER