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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN F. and ELLENOR V. VAN DEVENTER

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 23rd day of July , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon John F. & Ellenor V. Van Deventer (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. John F. Van Deventer
Mead Point Drive
Greenwich, Connecticut

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 July , 1974.

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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c/o Lord, Day & Lord
25 Broadway
New York, New York 10004
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Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS S. and ELSIE D. WILLIAMS

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

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

State of New York
County of Albany

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Marks Road
Riverside, Connecticut

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.

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STATE TAX COMMISSION

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of

FRANCIS S. and ELSIE D. WILLIAMS

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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

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Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

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

ADDRESS YOUR REPLY TO

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

Dated: Albany, New York

July 23, 1974

**Mr. & Mrs. Francis S. Williams
Marks Road
Riverside, Connecticut**

Dear Mr. & Mrs. Williams:

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
Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
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Dated: Albany, New York

July 23, 1974

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Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRANCIS S. and ELSIE D. WILLIAMS : DECISION
for a Redetermination of a Deficiency :
or for refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1964 and 1965. :

In the Matter of the Petition :
of :
JOHN F. and ELLENOR V. VAN DEVENTER : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Years 1964 and 1965. :

Francis S. and Elsie D. Williams filed a petition under section 689 of the Tax Law for a redetermination of a deficiency issued January 26, 1970, in the amount of \$392.38 plus interest of \$99.43 for a total of \$491.81 for personal income taxes under Article 22 of the Tax Law for the years 1964 and 1965.

John F. and Ellenor V. Van Deventer filed a petition under section 689 of the Tax Law for the redetermination of a deficiency issued January 26, 1970, in the amount of \$194.31 plus interest of \$50.04 for a total of \$244.35 for personal income tax under Article 22 of the Tax Law for the years 1964 and 1965.

A hearing was duly held in conjunction with the companion case of F. Eberstadt and Co. Said hearing was held on May 30, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer, Petitioners were represented by J. Edward Shillingburg, Esq., of Lord, Day & Lord. 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 whether certain salaries paid directly to petitioners were merely salaries subject to allocation between New York and other states on a time basis, or rather, whether such salaries represented income to a partnership and then a distribution of profits to petitioners and not, therefore, subject to allocation between New York and other states except to the extent that the partnership allocates its own income.

FINDINGS OF FACT

1. Petitioners were nonresidents of New York. Mr. Francis S. Williams and John F. Van Deventer were partners in F. Eberstadt and Co., a partnership earning all of its income in New York. They were also officers of "M & D", a corporation wholly owned by the partnership.

2. The salaries paid by "M & D" to all people including John F. Van Deventer and Francis S. Williams were subject to withholding for social security tax and income taxes.

3. There is no evidence that the salary income here in question was included in the income of the partnership as reported

on the Federal partnership return.

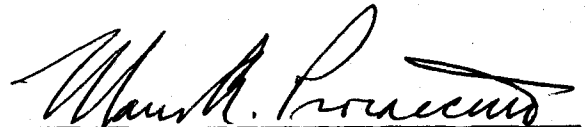
4. That salary received from "M & D" was individual income and was properly allocated according to time worked in and out of the state and was not a distribution from the partnership.

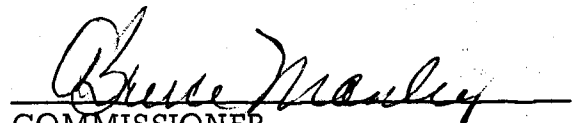
CONCLUSIONS OF LAW

The salaries in question are not attributable to the partnership for purposes of the personal income tax. The petitioners' returns are therefore correct as filed. The deficiency in issue is found erroneous in its entirety and is cancelled.

DATED: Albany, New York
July 23, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER