

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JONATHAN HAYT AND EMILIE S. :
HAYT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~xxxx Period(s)~~ 1970 ;
1971 and 1972.

State of New York
County of Albany

Carmen Mottolese , 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 13th day of September , 19 76 she served the within Notice of Decision by (certified) mail upon Jonathan Hayt and Emilie S. Hayt ~~(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. Jonathan Hayt
P.O. Box 316
Rancho Sante Fe, CA 92067

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ ~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ ~~XXXXXX~~ petitioner.

Sworn to before me this
13th day of September , 1976.

Carmen Mottolese

Janet Mack

In the Matter of the Petition

of
JONATHAN HAYT AND EMILIE S. HAYT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (s) 22 of the
Tax Law for the Year(s) ~~or Period(s)~~ 1970;
1971 and 1972.

State of New York
County of Albany

Carmen Mottolese, 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 13th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Edward M. Lee, Jr., Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edward M. Lee, Jr., Esq.
5979 West Third Street
Los Angeles, CA 90036

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) 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

13th day of September, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 13, 1976

TELEPHONE: (518) ~~457-3850~~

Mr. & Mrs. Jonathan Hayt
P.O. Box 316
Rancho Sante Fe, CA 92067

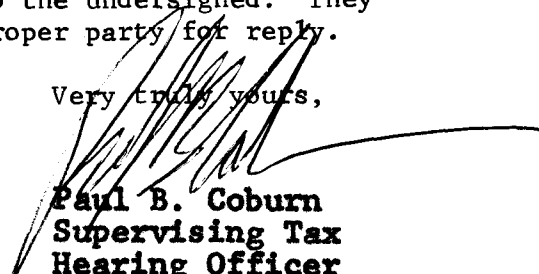
Dear Mr. & Mrs. Hayt:

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

Please take further notice that pursuant to
Section **(X) 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.

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JONATHAN HAYT and EMILIE S. HAYT : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1970, 1971 :
and 1972. :

Petitioners, Jonathan Hayt and Emilie S. Hayt, P.O. Box 316, Rancho Sante Fe, California 92067, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970, 1971 and 1972. (File No. 2-29605104). Petitioners waived in writing a formal hearing. The case was submitted to the State Tax Commission for a decision based on the information contained in the file.

ISSUES

I. Whether petitioners, Jonathan Hayt and Emilie S. Hayt, are liable for penalties imposed for the years 1970 and 1971 under sections 685(a)(1) and (2) of the Tax Law?

II. Whether payments to petitioner, Jonathan Hayt, resulting from sale of interest in a partnership were capital gain?

III. Whether certain itemized deductions taken by petitioners, Jonathan Hayt and Emilie S. Hayt, should be allowed?

FINDINGS OF FACT

1. Petitioners, Jonathan Hayt and Emilie S. Hayt, timely filed a New York State income tax non-resident return for the year 1972. The petitioners filed their 1970 and 1971 New York State income tax non-resident returns late.

2. On February 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Jonathan Hayt and Emilie S. Hayt. Accordingly, it issued a Notice of Deficiency in the amount of \$8,480.92 including penalties and interest. The only issues raised by the Statement of Audit Changes that are being contested by the petitioners are (1) the imposition of penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1970 and 1971; (2) the amount of their itemized deductions for the year 1972 and (3) the amount of capital gain, if any, for the year 1972 attributable to the alleged sale by petitioner, Jonathan Hayt, of an interest in New York partnerships.

3. Petitioners, Jonathan Hayt and Emilie S. Hayt, were residents of New York State until 1969. In 1969 petitioners moved to California.

4. In 1972, petitioner, Jonathan Hayt, realized net income of \$91,510.00 from the sale of his interest in the law partnership of Hayt, Hayt, Tolmach and Landau and Hayt and Bernard. These were New York partnerships that derived their income from New York sources.

5. Petitioners, Jonathan Hayt and Emilie S. Hayt, had itemized deductions of \$17,745.00 for interest, \$4,947.00 for property taxes and \$295.00 for miscellaneous items paid for the year 1972.

6. Petitioners, Jonathan Hayt and Emilie S. Hayt, were advised by their tax counsel that they were not required to file New York State income tax returns for the years 1970 and 1971.

CONCLUSIONS OF LAW

A. That petitioners', Jonathan Hayt and Emilie S. Hayt, had reasonable cause for failure to timely file New York State income tax returns for the years 1970, and 1971 and therefore the penalties imposed pursuant to sections 685(a)(1) and (2) of the Tax Law are waived.

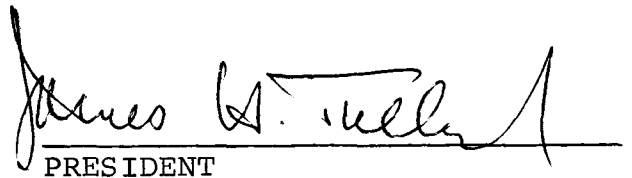
B. That the net income of \$91,510.00 received by petitioner, Jonathan Hayt, in 1972 from the partnerships from which he retired constituted a capital gain derived from New York sources and was subject to New York State personal income tax.

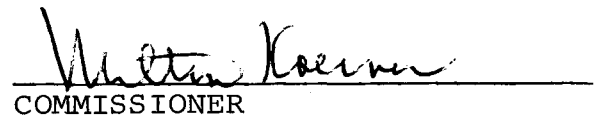
C. That petitioners, Jonathan Hayt and Emilie S. Hayt, had itemized deductions totaling \$22,987.00 for the year 1972.

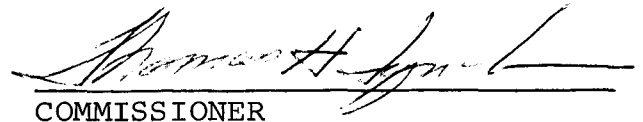
D. The the Notice of Deficiency issued February 25, 1974, is modified in accordance with this decision and the petition is, in all other respects, denied.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER