

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SHEPARD BROAD

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) ~~XXXXXX~~ :
1961 through 1965

State of New York
County of Albany

Marsina Domini, 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 21 day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Shepard Broad,
c/o Broad & Cassel ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Shepard Broad
c/o Broad & Cassel
420 Lincoln Road
Miami Beach, Florida 33139
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

21st day of June, 1977.

Marsina Domini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SHEPARD BROAD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~13~~ 22 of the :
Tax Law for the Year(s) ~~1961 through 1965~~ :
1961 through 1965

State of New York
County of Albany

Marsina Donnini, 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 21st day of June, 1977, she served the within

Notice of Decision by (certified) mail upon David Kestenbaum & Co.,

c/o R. A. Mendel (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: David Kestenbaum & Co.
c/o R. R. Mendel
10 East 40th Street
New York, New York 10016

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

21st day of June, 1977.

Marsina Donnini

Janet Truck



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

June 21, 1977

TELEPHONE: (518) 457-1723

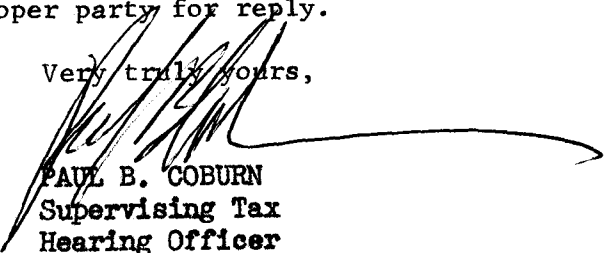
Shepard Broad
c/o Broad & Cassel
420 Lincoln Road
Miami Beach, Florida 33139

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 TAX COMMISSION

In the Matter of the Petition :
of :
SHEPARD BROAD :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1961 through 1965. :

Petitioner, Shepard Broad, c/o Broad and Cassel, 420 Lincoln Road, Miami Beach, Florida 33139, filed a petition for redetermination of a deficiency or for refund of personal income under Article 22 of the Tax Law for the years 1961 through 1965. (File No. 01032).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1976 at 1:15 P.M. Petitioner appeared by R. R. Mendel, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was a nonresident partner in a New York brokerage firm, and thus subject to New York State income tax upon the distributive share of income received from the partnership.

FINDINGS OF FACT

1. On November 26, 1973, as the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Shepard Broad, imposing personal income taxes for the years 1961 through 1965. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$31,267.10, plus penalty and interest of \$25,239.47 for a total of \$56,506.57.

2. On February 1, 1960, petitioner, Shepard Broad, pursuant to a written agreement, continued as a non-risk limited partner in Bache & Co., a multi-state, multi-national securities brokerage firm whose income is earned from business carried on within and without New York State.

3. Petitioner, Shepard Broad, a bona fide resident of Florida during the years in issue, was married. He secured and relied upon the advice of a certified public accounting firm regarding his income tax for the years in issue. He did not file any New York State income tax returns for these years. In prior years, he became a subordinated lender in the form of a non-risk limited partner of Bache & Co., and initially loaned it the sum of \$300,000.00 for a period of three years with options to renew the loan annually, unless earlier terminated.

4. During the years in issue, petitioner Shepard Broad's income of Bache and Co. from New York sources was as follows:

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>
Ordinary Income	19,764	39,540	7,466	38,138	77,055
Short Term Capital Gain (loss)	3,104	2,579	1,018	(309)	(5,174)
50% Long Term Capital Gain	<u>4</u>	<u>2,457</u>	<u>2,321</u>	<u>1,917</u>	<u>3,250</u>
	22,872	44,756	10,805	39,746	75,131
Federal Adjustment Ordinary Income	5,576	9,498	2,311	6,303	2,863
Dividends	--	486	(486)	--	14
Short Term Capital Gain (loss)	(4,036)	(3,468)	(1,610)	134	5,225
50% Long Term Capital Gain (loss)	<u>--</u>	<u>(1,617)</u>	<u>(228)</u>	<u>(1,860)</u>	<u>(3,174)</u>
Total	24,412	49,655	10,792	44,323	80,059

5. During the years in issue, petitioner, Shepard Broad's Federal gross income per return is as follows:

	<u>1961</u>	
Adjusted Gross Income per return		\$166,482.07
Audit changes		
Increase ordinary income	5,576.18	
Decrease short term gains	<u>4,035.75</u>	<u>1,540.43</u>
		168,022.50
	<u>1962</u>	
Adjusted Gross Income per return		235,019.55
Adjusted Gross Income per audit adjustment		240,226.78

1963

Adjusted Gross Income per return	165,062.78
Adjusted Gross Income per audit adjustment	173,443.74

1964

Adjusted Gross Income per return	249,306.37
Adjusted Gross Income per audit adjustment	253,649.42

1965

Adjusted Gross Income per return	433,273.87
Total Adjustments 1A - 1D	<u>4,928.52</u>
	\$438,202.39

6. During the years in issue, petitioner Shepard Broad's itemized deductions were as follows:

	<u>New York Income</u> <u>Federal Income</u>	x	Federal	Deductions = N.Y.	Itemized Deductions
1961	<u>24,412</u> 168,022	x	97,155	=	\$14,116
1962	<u>49,655</u> 240,222	x	143,762	=	\$29,716
1963	<u>10,792</u> 173,444	x	94,393	=	\$ 5,873
1964	<u>44,323</u> 253,649	x	178,703	=	\$31,227
1965	<u>80,059</u> 438,202	x	299,756	=	\$54,765

7. During the years in issue, Ruth K. Broad, wife of petitioner Shepard Broad, had no income from New York sources.

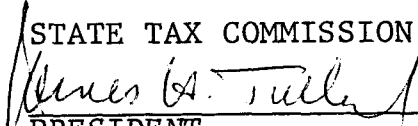

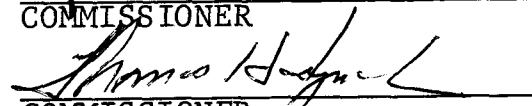
CONCLUSIONS OF LAW

A. That petitioner, Shepard Broad, as a nonresident partner in a New York firm during 1961 through 1965 was subject to New York State income tax upon the distributive share of income received from Bache & Co., derived from or connected with New York sources according to the meaning and intent of section 637(a) and 637(b) of the Tax Law.

B. That the petitioner, Shepard Broad, is not entitled to the personal exemption of his wife, Ruth K. Broad, a non-resident who had no income from New York sources and thus, was not subject to New York income tax in accordance with the meaning and intent of section 636(b) of the Tax Law.

C. That the petition of Shepard Broad is granted to the extent that the penalty imposed pursuant to 685(a) of the Tax Law for the years in issue is cancelled; that the income tax for these years be recomputed as per Findings of Fact "4", "5" and "6" together with such interest as is legally due; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued November 26, 1973; and, that except as so granted the petition is in all other respects denied.

DATED: Albany, New York
June 21, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER