

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERB W. JACOBS and MAXINE S. JACOBS:

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (a) 22 of the :  
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ :  
1967 and 1968.

State of New York  
County of Albany

Bruce Batchelor , 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 28th day of February , 19 77, she served the within  
Notice of Decision by (certified) mail upon Herb W. Jacobs &  
Maxine S. Jacobs  
(~~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. Herb W. Jacobs  
720 W. Conway Drive, N.W.  
Atlanta, Georgia 30327

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)~~  
~~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

28th day of February , 1977

Bruce Batchelor

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HERB W. JACOBS and MAXINE S. JACOBS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1967 and 1968.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 28th day of February , 19 77, he served the within  
Notice of Decision by (certified) mail upon Harvey Seelig  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Harvey Seelig  
c/o Brout, Isaacs & Company  
380 Madison Avenue  
New York, New York 10017  
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

28th day of February , 1977.

Bruce Batchelor

[Signature]



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

February 28, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Harb W. Jacobs  
720 W. Conway Drive, N.W.  
Atlanta, Georgia 30327

Dear Mr. & Mrs. Jacobs:

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 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:



ISSUE

Whether petitioner, Herb W. Jacobs, was a partner in Hertzfeld and Stern during the years 1967 and 1968.

FINDINGS OF FACT

1. Petitioners, Herb W. Jacobs and Maxine S. Jacobs, filed a New York State Combined Income Tax Return and a New York State Income Tax Nonresident Return for the year 1967. In 1968, they filed a New York State Income Tax Nonresident Return. On said returns they allocated petitioner, Herb W. Jacobs' income for said years, based on the number of days he alleged to have worked within and without New York State.

2. On April 12, 1971, the Income Tax Bureau issued statements of audit changes against petitioners, Herb W. Jacobs and Maxine S. Jacobs, disallowing the allocation of partnership income on the basis of days worked in and out of New York State. Accordingly, the Income Tax Bureau issued notices of deficiency in the amount of \$4,741.73, plus interest of \$851.61, for a total of \$5,593.34 for the year 1967 and \$10,554.03, plus interest of \$1,262.26, for a total of \$11,816.29 for the year 1968.

3. In the years in issue, petitioner, Herb W. Jacobs, was a commission broker. He was listed in the New York Stock Exchange Directories as a general partner of Herzfeld and Stern. A partnership agreement with this firm gave petitioner 45% of gross commissions, 1/2% of net profits and 1/2% of net losses, should that occur.

4. Petitioner did not claim nor did he submit any documentary or other evidence that the firm Herzfeld and Stern had any office or did any business without New York State during the years in issue.

CONCLUSIONS OF LAW

A. That during the years in issue, petitioners, Herb W. Jacobs and Maxine S. Jacobs, may not allocate partnership income received by Herb W. Jacobs as partner in the firm of Herzfeld and Stern, based upon the number of days he worked within and without New York State. Their New York adjusted gross income as nonresidents must include the distributive share of partnership income, gain, loss and deduction, derived from or connected with New York sources according to the meaning and intent of section 637(a)(1) of the Tax Law. Since all of the partnership income of Herzfeld and Stern was derived from or connected with New York sources, therefore, all of petitioner, Herbert W. Jacobs, distributive share of said income was subject to New York State personal income tax.

B. That the petition of Herb W. Jacobs and Maxine S. Jacobs is denied.

DATED: Albany, New York  
February 28, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER