

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLEMENT J. WOHLREICH
and HOLLY B. WOHLREICH

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~~
1969 and 1970

AFFIDAVIT OF MAILING

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 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Clement J. & Holly B.
Wohlreich ~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Clement J. & Holly B. Wohlreich
40 Dorison Drive
Short Hills, New Jersey 07078
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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

16th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CLEMENT J. WOHLREICH
and HOLLY B. WOHLREICH
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)~~
1969 and 1970

AFFIDAVIT OF MAILING

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 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Layton & Sherman, Esqs.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Layton & Sherman, Esqs.
50 Rockefeller Plaza
New York, New York 10020
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

16th day of August, 1977.

Marsina Domini

Janet [Signature]



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 16, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Clement J. & Holly B. Wohlreich
40 Dorison Drive
Short Hills, New Jersey 07078

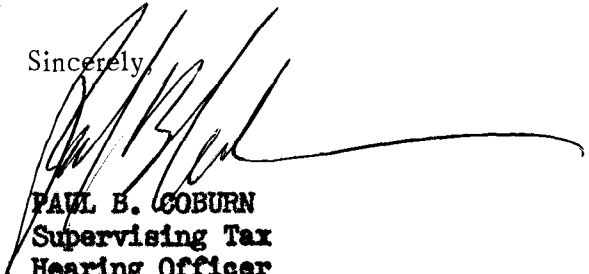
Dear Mr. & Mrs. Wohlreich:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) ~~102~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


PAUL B. COBURN
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CLEMENT J. WOHLREICH	:	
and HOLLY B. WOHLREICH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax Under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

Petitioners, Clement J. Wohlreich and Holly B. Wohlreich, residing at 40 Dorison Drive, Short Hills, New Jersey, 07078, 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 1969 and 1970. (File No. 00649).

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, on December 8, 1976 at 1:15 P.M. Petitioners appeared by Layton & Sherman, Esqs. (Robert Layton, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq., of counsel).

ISSUES

I. Whether all or part of petitioner's interest in the capital gains and losses of the Arbitrage "No. 2" Account maintained at Axelrod & Company during 1969 and 1970 was a partnership distribution and taxable as New York source income.

II. Whether certain of petitioner's expenditures for the production and collection of his distributive share from Axelrod & Company were allowable deductions in determining his taxable income derived from New York State sources.

FINDINGS OF FACT

1. On February 28, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Clement J. Wohlreich and Holly B. Wohlreich, imposing personal income tax for the years 1969 and 1970 on the grounds that the income from Axelrod & Company was partnership income derived from New York State sources. Accordingly it issued a Notice of Deficiency in the amount of \$34,681.99 plus interest of \$7,197.44 for a total of \$41,879.43.

2. Petitioner, Clement J. Wohlreich is a non-resident and was a member of a New York partnership known as Axelrod & Company engaged in a general stock exchange brokerage business during the years in issue. Pursuant to an agreement in 1969 he had entered into with Axelrod & Company, a New York limited partnership firm, whereby he contributed his membership on the American Stock Exchange for the use of the firm and for the protection of firm creditors. In a subsequent agreement in January 1969 he became entitled to 7% of the firm profits and chargeable with 7% of its losses after distributions of an Arbitrage Investment Account. Pursuant to the April 23, 1969 agreement, he transferred his seat on the American Stock Exchange to the firm which

then became the beneficial owner, subject to the constitution and rules of the American Stock Exchange. The proceeds of his membership was to be an asset of the firm. He would be entitled to 8% of the Arbitrage Investment Account transactions, an annual salary of \$55,000.00, to continue on the floor as a broker and entitled to 50% of floor commissions on transactions executed by him for parties other than the firm. The Arbitrage Investment Account, which he was to utilize for transactions as a registered trader on the Exchange was to be funded by the firm, Axelrod & Company in the amount of \$300,000.00 with the firm bearing costs and expenses of such trading except for a 50/50 sharing of these transaction taxes and certain per ticket charges. Half of these profits could be withdrawn at the end of each month by either party. The account was terminated on October 13, 1970.

3. Prior to April 23, 1969, petitioner, Clement J. Wohlreich realized \$80,914.58 of gains from trading as a non-resident with his own capital. Total 1969 short term capital gains was \$128,839.94. Therefore, short term capital gain pursuant to the Arbitrage Investment Account fund was \$47,925.36. In 1969 he incurred non-reimbursed business expenses amounting to \$2,849.00 and \$9,404.00 for professional accounting and legal fees, totaling \$12,253. In 1970 there were business expenses of \$5,334.00 and \$12,585.00 for professional accounting and legal fees totaling \$17,919.00.

CONCLUSIONS OF LAW

A. That the trading account utilized by petitioner, Clement J. Wohlreich, for trading on the floor of the American Stock Exchange was funded by Axelrod & Company, a New York partnership and the amount of gains and income were produced by transactions made possible by this partnership's securities capital and facilities. Therefore, the gains generated from the transactions were partnership gains and distribution was fully taxable as New York source income and not exempt according to the meaning and intent of section 632(d) of the Tax Law.

B. That petitioner, Clement J. Wohlreich, was entitled to a deduction of expenses incurred in connection with the gains received in the partnership endeavor according to the meaning and intent of section 637(c) of the Tax Law.

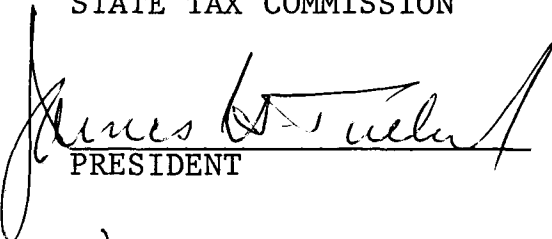
C. That prior to April 23, 1969, date of the partnership agreement, petitioner, Clement J. Wohlreich, a non-resident purchased and sold property for his own account. Any gain earned by him on the purchase and sale of his property for his own account was not New York source income and not taxable according to the meaning and intent of section 637(d) of the Tax Law.

D. That the petition of Clement J. Wohlreich and Holly B. Wohlreich is granted to the extent that the income tax for 1969 and 1970 be recomputed as per conclusions of law "B" and "C" supra together with such interest as is legally due; that the Income Tax Bureau is hereby directed to accordingly modify the

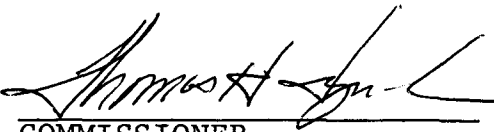
Notice of Deficiency issued February 25, 1974 against petitioner Clement J. Wohldreich and Holly B. Wohldreich; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER