

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN F. and KARLENE A. NEVIN

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) 1969 :
~~(s) 1969~~

State of New York
County of Albany

John Huhn

, being duly sworn, deposes and says that

~~He~~ she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of October , 1978 , ~~she~~ she served the within

Notice of Decision by (certified) mail upon John F. & Karlene A. Nevin

~~(representative of the)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: John F. & Karlene A. Nevin
200 East 36th Street
New York, New York 10016

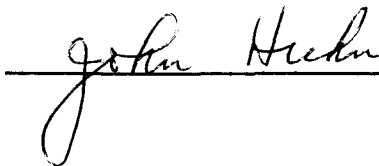
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~XXXXXX~~ 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 October , 19 78







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

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

October 13, 1978

John F. & Karlene A. Nevin
200 East 36th Street
New York, New York 10016

Dear Mr. & Mrs. Nevin:

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 ~~690~~ 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,

JOSEPH CHYRYWATY
HEARING EXAMINER

~~Taxing Bureau's Representative~~

Taxing Bureau's Representative

STATE TAX COMMISSION

II. Whether interest imposed on a deficiency should be abated or waived.

FINDINGS OF FACT

1. Petitioners, John F. and Karlene A. Nevin, filed a New York State combined income tax return for 1969, on which they reported dividend income received from a firm in Zambia. However, petitioners omitted dividend income of \$3,187.00 which represented money withheld by the firm and paid over to the government of Zambia.

2. The Income Tax Bureau issued a deficiency in the sum of \$345.33, whereby the omitted dividend income was held subject to personal income tax. Subsequently, petitioners paid \$325.00 as an offer of settlement. This consisted of \$290.44 in personal income taxes, plus \$34.76 in interest. Said offer was accompanied by a letter stating that the additional interest due was unfair, since petitioners were not the cause in the delay of this matter.

3. Although the Income Tax Bureau accepted the remittance, they rejected the offer of settlement and requested the payment of additional interest due.

4. Petitioners contended that although a foreign tax was legitimately withheld and paid to the government of Zambia, this income should not be taxed by New York State, since petitioners never received the \$3,187.00 in question.

5. Petitioners filed a Federal income tax return for 1969 wherein total dividends reported included the \$3,187.00.

CONCLUSIONS OF LAW

A. That the total gross dividend payable to petitioners is includable in New York adjusted gross income pursuant to section 612(a) of the Tax Law, regardless of the fact that a portion of said dividend was not paid to petitioners because of tax regulations of a foreign nation.

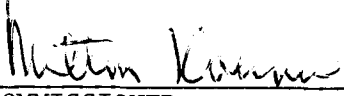
B. That Article 22 of the Tax Law does not provide for the abatement or waiving of interest properly due.

C. That the petition of John F. and Karlene A. Nevin is denied and the Notice of Deficiency issued January 29, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER