

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
George & Sylvia Backer :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1972. :

State of New York
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Decision by certified mail upon George & Sylvia Backer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George & Sylvia Backer
42 Sherwood La.
Cedarhurst, NY 11516

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George & Sylvia Backer :
for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1972. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Sidney Wettstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sidney Wettstein
30 Vesey St.
New York, NY 10007

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
26th day of November, 1979.

Joanne Krapp

J. Vredenburg

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

November 26, 1979

George & Sylvia Backer
42 Sherwood La.
Cedarhurst, NY 11516

Dear Mr. & Mrs. Backer:

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) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sidney Wettstein
30 Vesey St.
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE BACKER and SYLVIA BACKER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the	:	
Year 1972.	:	

Petitioners, George Backer and Sylvia Backer, 42 Sherwood Lane, Cedarhurst, New York 11516, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 13524).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1978 at 2:45 P.M. Petitioners appeared by Sidney Wettstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether a New York resident is entitled to a credit against his New York income tax for the tax paid to New Jersey on a dividend income received by him from a New Jersey corporation, of which he is an officer and an employee and from which he also received a salary.

FINDINGS OF FACT

1. Petitioners, George Backer and Sylvia Backer, filed a New York State income tax resident return for 1972. In connection therewith, they claimed a credit for New Jersey Emergency Transportation Tax paid by them to the State of New Jersey.

2. On September 30, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners for \$2,124.88 in personal income tax, plus interest of \$232.72, for a total of \$2,357.60. This was done on the ground that "Resident credit does not apply in respect to the tax upon income from intangibles (dividends)..." and further on the ground that "...dividends received by a nonresident are not subject to tax by New Jersey.". Petitioners made timely application for a hearing to review the Notice of Deficiency.

3. During 1972, petitioners, George Backer and Sylvia Backer, were residents of New York State.

4. During 1972, petitioner George Backer was the secretary, an active sales executive, and the owner of 50 percent of the voting stock of Resinous Chemical Corporation, a New Jersey corporation, with offices for the conduct of its business located in Linden, New Jersey.

5. During 1972, petitioner George Backer, as a stockholder of said Resinous Chemical Corporation, received a dividend of \$15,000.00. During the same period, petitioner George Backer received a salary of \$57,200.00 from Resinous Chemical Corporation for his services as an employee and officer of said corporation.

6. Petitioners' representative contended that since petitioner George Backer owned 50% of the stock in the corporation and since the corporation was not a publicly-owned corporation, he was convinced that the dividend income should be reported to New Jersey.

CONCLUSIONS OF LAW

A. That the term "income derived from sources within" another state or the District of Columbia is construed so as to accord with the definition of the term "derived from or connected with New York sources" set forth in Part 131 in relation to the adjusted gross income of a nonresident individual (20 NYCRR 121.3(d)). That items of income, gain, loss and deduction attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, do not constitute items of income, gain, loss and deductions derived from or connected with New York sources, except to the extent attributable to property employed in a business, trade, profession or occupation carried on in this State (20 NYCRR 131.5).

B. That neither the Tax Law nor the Personal Income Tax Regulations differentiate between dividends paid by a public corporation or non-public or closely held corporation. That dividend income received by petitioner George Backer from Resinous Chemical Corporation is attributable to intangible personal property which was not employed in a business, trade, profession or occupation carried on in the State of New Jersey within the meaning of 20 NYCRR 131.5 and 20 NYCRR 121.3(d). Accordingly, no credit is allowed under Section 620 of the Tax Law for tax paid to New Jersey on the aforementioned dividend income.

C. That the petition of George Backer and Sylvia Backer is denied and that the Notice of Deficiency issued September 30, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER