

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRWIN MANDEL

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) 1963, 1965, 1966 and 1967. :

State of New York
County of Albany

John Huhn, 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 4th day of May, 19 79, He served the within
Notice of Decision by (certified) mail upon Irwin Mandel

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Irwin Mandel
1302 Belmont
Grand Forks, North Dakota

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)~~
~~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

4th day of May, 19 79

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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IRWIN MANDEL

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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) XXXXXXX :
1963, 1965, 1966 & 1967. :

State of New York
County of Albany

John Huhn, 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 4th day of May, 1979, ~~he~~ served the within
Notice of Decision by (certified) mail upon Allan Mandel
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Allen Mandel
136 Lakeshore Drive
North Palm Beach, Florida 33408
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

4th day of May, 1979.

Marilyn J. Rapineau

John Huhn



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

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

May 4, 1979

Irwin Mandel
1302 Belmont
Grand Forks, North Dakota

Dear Mr. Mandel:

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 ~~(8)~~ **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 CHYRWATY
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IRWIN MANDEL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1963, 1965,	:	
1966 and 1967.	:	

Petitioner, Irwin Mandel, 1302 Belmont, Grand Forks, North Dakota, 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 1963, 1965, 1966 and 1967 (File No. 00555).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1978 at 9:15 A.M. Petitioner appeared by Allan Mandel. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUES

I. Whether petitioner, a nonresident of New York State, received a distributive share of partnership income from sources within New York State during 1963, 1965, 1966 and 1967.

II. Whether petitioner was entitled to allocate his distributive share of partnership income.

FINDINGS OF FACT

1. Petitioner, Irwin Mandel, did not file a New York State personal income tax nonresident return for the years at issue.

2. The Income Tax Bureau contended that petitioner was a member of a partnership which derived income from New York sources; therefore, his distributive share of partnership income was taxable. On May 21, 1973, it issued a Notice of Deficiency against petitioner, asserting personal income tax of \$2,316.02, penalty of \$578.99 (pursuant to section 685(a) of the Tax Law) and interest of \$1,058.34, for a sum of \$3,953.35.

3. Petitioner and his brother, Allan Mandel, were partners in the firm of Mandel Furs. They shared profits and losses equally. The gross receipts of the partnership were derived from the two retail fur and apparel stores in North Dakota. During the years at issue, Allan Mandel lived in Great Neck, New York, and performed services for the partnership in New York City, which was the center of the fur and apparel trade.

4. Allan Mandel had desk space in an office building in New York City which catered to the fur trade. He had the use of a telephone and had stationery with the New York address imprinted thereon. His duties on behalf of the partnership included buying finished fur coats and furs which were made into garments by independent contractors and then shipped to the two retail stores in North Dakota. He also made garment repairs and alterations for both stores. The partnership had a separate bank account in New York City and filed New York State partnership tax returns for 1963 and 1965.

5. The Income Tax Bureau determined the amount of petitioner's distributive share of partnership income allocable to New York for 1963 and 1965. It acquired this information from his Federal tax returns and the New York State partnership

returns which showed the breakdown of income earned in New York State from operations carried on in New York. The percentage of total partnership income which was derived from New York State sources during 1963 and 1965 was 14% and 58%, respectively.

6. The Income Tax Bureau allocated petitioner's total Federal distributive share of partnership income for 1966 and 1967, as determined from the Federal partnership tax returns, to New York State, without regard to income from sources without New York.

CONCLUSIONS OF LAW

A. That petitioner, Irwin Mandel, received a distributive share of partnership income from New York State sources during 1963 and 1965 in the respective amounts of \$2,483.25 and \$15,627.37, in accordance with the meaning and intent of sections 632 and 637 of the Tax Law and 20 NYCRR 131.4(a) and 134.1.

B. That the amount of petitioner's distributive share of partnership income (for 1966 and 1967) was determined incorrectly in that the partnership, Mandel Furs, maintained offices in the State of North Dakota, thereby entitling petitioner to allocate his Federal distributive share in accordance with the meaning and intent of 20 NYCRR 134.1.

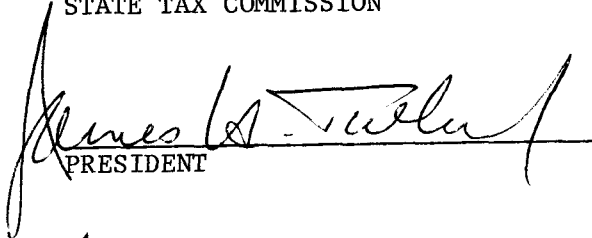
C. That the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued May 21, 1973, by allocating a portion of petitioner's Federal

distributive share of partnership income for 1966 and 1967 to sources within New York State, in accordance with the meaning and intent of 20 NYCRR 134.1; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

May 4, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER