

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

H. Gerard & Claire B. Moersdorf :

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 1968. :

State of New York

County of Albany

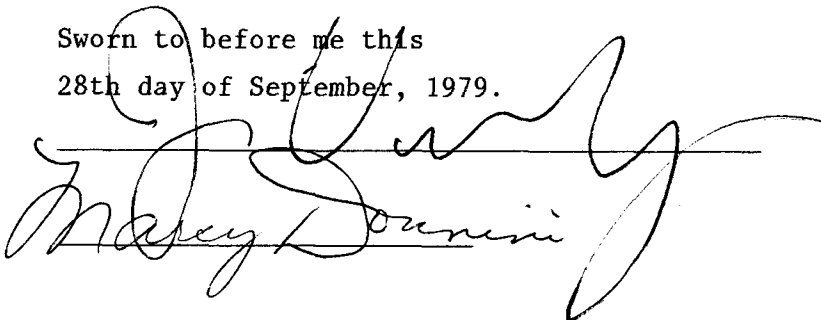
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon H. Gerard & Claire B. Moersdorf, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

H. Gerard & Claire B. Moersdorf
9819 100th Lane
Sun City, AZ 85351

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
28th day of September, 1979.



Nancy D. Durnini

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

H. Gerard & Claire B. Moersdorf :

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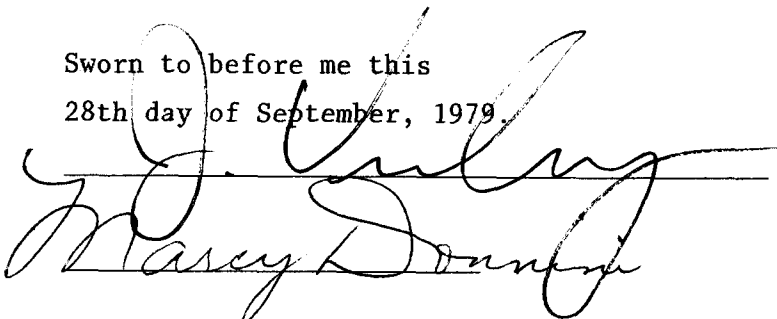
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Dennis S. Bunder the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Dennis S. Bunder
Arthur Young & Co.
275 Park Ave.
New York, NY 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 September, 1979.


Nancy L. Donahue



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

H. Gerard & Claire B. Moersdorf
9819 100th Lane
Sun City, AZ 85351

Dear Mr. & Mrs. Moersdorf:

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 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,

A handwritten signature in cursive script, appearing to read "Robert D. Tully".

cc: Petitioner's Representative
Dennis S. Bunder
Arthur Young & Co.
275 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
H. GERARD MOERSDORF and CLAIRE B. MOERSDORF
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the
Year 1968.

DECISION

Petitioners, H. Gerard and Claire B. Moersdorf, 9819 100th Lane, Sun City, Arizona 85351, 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 1968 (File No. 01947).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 23, 1974 at 10:00 A.M. Petitioner appeared by Arthur Young & Company (Dennis S. Bunder, CPA). The Income Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the gain derived from the sale of a partnership interest was taxable to a nonresident.

FINDINGS OF FACT

1. Petitioners, H. Gerard and Claire B. Moersdorf, timely filed a New York State income tax nonresident return for 1968, on which H. Gerard Moersdorf reported his distributive share of partnership income.

2. Petitioner H. Gerard Moersdorf was a general partner in the firm of Vilas & Hickey, a stockbrokerage doing business solely within New York State. He was also a member of the New York Stock Exchange. His membership in the

Exchange was subject to an "a-b-c" agreement with Vilas & Hickey. An a-b-c agreement is entered into when it is intended that a portion of the risk of fluctuations in the value of a membership, which is owned by a member of the Exchange, shall rest with that member's firm. In this way, the entire risk will not rest with the member individually; however, even if a membership is the subject of an a-b-c agreement, it remains a personal franchise, vested solely in the member (Rule 301 of the New York Stock Exchange).

Under the partnership agreement, each partner was entitled to a stated share of the assets of the firm. This included an account which reflected the unrealized appreciation or depreciation in the value of the membership which was the subject of an a-b-c agreement.

3. On June 26, 1972, the Income Tax Bureau issued a Notice of Deficiency which asserted personal income tax of \$6,981.16, plus interest of \$1,338.99, for a sum of \$8,320.15. Said Notice was issued on the grounds that the gain realized on the sale of Mr. Moersdorf's interest in the New York partnership of Vilas & Hickey was subject to tax.

4. Petitioner H. Gerard Moersdorf retired from the firm on March 31, 1968. On said date, he received his stated share of the firm's capital account and assets, which included the appreciated membership account. On February 8, 1969, his membership in the Exchange was transferred to another general partner of the firm.

5. On his Federal income tax return, he reported a long-term capital gain of \$105,613.00, which he identified as a gain on the sale of his partnership interest.

CONCLUSIONS OF LAW

A. That capital gain which is derived from the sale of a partnership

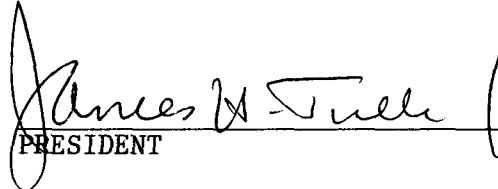
interest is a gain from New York sources to the extent that the partnership carried on business within New York State; therefore, since the partnership carried on business solely within New York State, the entire gain is subject to personal income tax, within the meaning and intent of section 632(b)(1)(B) of the Tax Law.

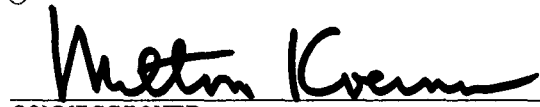
B. That the petition of H. Gerard and Claire B. Moersdorf is denied and the Notice of Deficiency issued June 26, 1972 is sustained, together with such additional interest as may be lawfully owing.

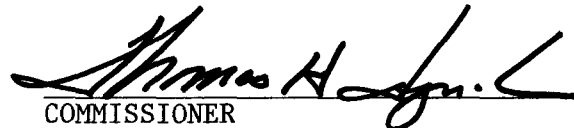
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER