

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Richard D. & Harrison W. Taylor :

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 Years 1972 & 1973. :

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 19th day of October, 1979, he served the within notice of Decision by certified mail upon Richard D. & Harrison W. Taylor, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

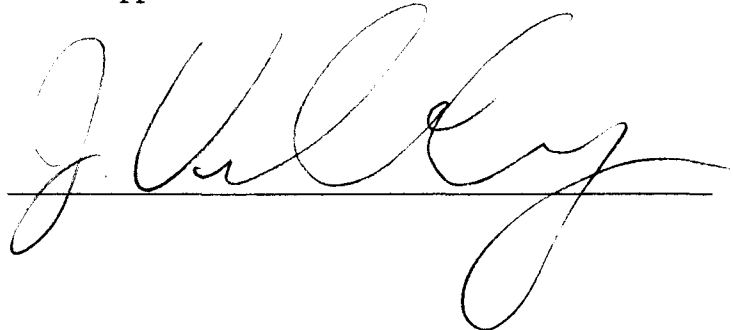
Richard D. & Harrison W. Taylor
99 Muller Rd.
Kent, CT 06757

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
19th day of October, 1979.


Mary Donnan


Jay Vredenburg

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

October 19, 1979

Richard D. & Harrison W. Taylor
99 Muller Rd.
Kent, CT 06757

Dear Mr. & Mrs. Taylor:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions
of
RICHARD D. TAYLOR and HARRISON W. TAYLOR
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1972 and 1973.

DECISION

Petitioners, Richard D. and Harrison W. Taylor, 99 Muller Road, Kent, Connecticut 06757, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File Nos. 12430, 17087 and 17088).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 25, 1977 at 10:45 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether petitioners were required to accrue to their final 1972 resident return, all remaining capital gains flowing from the installment sale of real property located within New York State.

II. Whether interest income received as the result of said installment sale is taxable to petitioners as nonresidents of New York State.

III. Whether petitioners had income from New York sources in 1973 other than the installment payments received on the sale of the real property.

FINDINGS OF FACT

1. Petitioners, Richard D. and Harrison W. Taylor, were residents of New York State from January 1, 1972 until February 28, 1972, at which time they

changed their residence to the State of Connecticut. Petitioners remained residents of Connecticut for the rest of 1972 and for all of 1973.

2. Petitioners timely filed separate nonresident income tax returns for 1972 on combined Form IT-209. Petitioner Harrison W. Taylor reported long-term capital gains of \$19,805.31, which amount represented the taxable payment received in 1972 on the installment sale of real property located in New York State. Petitioners timely filed a joint nonresident income tax return for 1973 on Form IT-203, reporting long-term capital gains of \$24,926.10, which amount represented the taxable payment received in 1973 on the installment sale of the real property.

3. On review, the Income Tax Bureau determined that the gain on the sale of the real property could not be reported on the installment basis, since petitioners had failed to comply with section 654(c)(4) of the Tax Law; therefore, on May 19, 1975, the Bureau issued a Notice of Deficiency for 1972 in the amount of \$18,676.12 in personal income tax, plus \$2,931.96 in interest. Said Notice was issued to Mrs. Taylor entirely due to the fact that separate returns were filed in 1972. On November 18, 1976, a second Notice of Deficiency was issued to both petitioners for 1973 in the amount of \$7,651.77 in personal income tax, plus \$1,484.21 in interest and \$82.74 in penalties pursuant to section 685(c) of the Tax Law. The latter Notice of Deficiency was based on a Statement of Audit Changes also dated November 18, 1976, wherein the Income Tax Bureau contended that petitioners were required to include interest income, business income, gain on the installment sale of the New York real property, and pension and annuity income in their New York adjusted gross income.

4. Prior to 1972 and while residents of New York State, petitioners sold real property located in the State, for which they were and are now being paid on an installment basis. This sale resulted in a long-term capital gain for

petitioners. They have been reporting the gain and paying the tax due thereon to New York each year, as the payments were received from the purchaser. The unreported taxable gain as of January 1, 1972 was \$96,648.14.

5. On their 1973 income tax return, petitioners reported total interest income of \$24,203.08, of which \$11,863.08 represented interest income received on promissory notes which were accepted by them in the sale of their New York real property. Except for the principal and interest payments received from the installment sale, no other income received by petitioners had any nexus with New York.

6. Petitioners timely filed amended 1972 and 1973 income tax returns claiming refunds of \$55.63 and \$481.20, respectively. No action was taken by the Income Tax Bureau with respect to the 1972 amended return, while the refund claimed on the 1973 amended return was denied by a notice dated November 18, 1976.

CONCLUSIONS OF LAW

A. That in order to avoid the accruals mandated by section 654(c)(1) of the Tax Law and 20 NYCRR 148.10, one must comply with the requirements of section 654(c)(4) of the Tax Law and 20 NYCRR 148.11. Petitioners did not meet said requirements, since they failed at any time to file a security bond or other security which was satisfactory to the State Tax Commission; therefore, the unreported taxable gain of \$96,648.14 (not \$96,801.15 as contended by the Income Tax Bureau) is fully taxable in 1972.

B. That petitioners' 1972 amended returns are disregarded for the purpose of these proceedings, since the accrual of the gain on the installment sale to the amended returns would result in a greater deficiency than that asserted in the Notice of Deficiency dated May 19, 1975. Since a claim of greater deficiency was not asserted at or before the hearing (in accordance with section 689(d)(1)

of the Tax Law), any greater deficiency must be disregarded as a matter of law.

C. That the gain reported by petitioners on their 1973 return from the sale of New York real property is to be excluded from 1973 New York income, since the entire unreported gain has been accrued to 1972, in accordance with Conclusion of Law "A".

D. That petitioners have failed to sustain the burden of proof which requires them to show the nature of the real property sold (i.e., business versus investment) or the amount of gain attributable to each parcel of property. Accordingly, the interest income received by petitioners in 1973 which is derived from or connected with the sale of the New York real property is includible in petitioners' New York adjusted gross income, under sections 632(a) and 632(b) of the Tax Law. Total New York income for 1973 is decreased from \$29,911.30 to \$11,863.08.

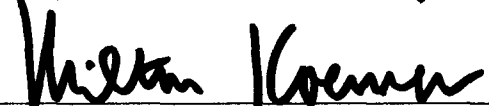
E. That the tax paid by petitioners on the installment gain on a year-to-year basis should be credited against the tax due in 1972, since the entire installment gain has been accrued to 1972.

F. That the petitions of Richard D. and Harrison W. Taylor are granted to the extent indicated in Conclusions of Law "A", "C", "D" and "E". The Income Tax Bureau is directed to modify the notices of deficiency, and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER