

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Arthur E. & Carolyn S. Wilfond :  
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. :

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 Arthur E. & Carolyn S. Wilfond, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur E. & Carolyn S. Wilfond  
82 Stephenville Parkway  
Edison, NJ 08817

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 :  
Arthur E. & Carolyn S. Wilfond :

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 Byron Zabusky 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. Byron Zabusky  
666 Fifth Ave.  
New York, NY 10019

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 Knapp

J. Vredenburg

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

November 26, 1979

Arthur E. & Carolyn S. Wilfond  
82 Stephenville Parkway  
Edison, NJ 08817

Dear Mr. & Mrs. Wilfond:

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  
Byron Zabusky  
666 Fifth Ave.  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ARTHUR E. WILFOND and CAROLYN S. WILFOND	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

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Petitioners, Arthur E. Wilfond and Carolyn S. Wilfond, 82 Stephenville Parkway, Edison, New Jersey 08817, 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. 15365).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 15, 1978. Petitioners appeared by Byron Zabusky, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the distributive share of partnership income of petitioner Arthur E. Wilfond, as reported in the 1972 partnership income tax return, was taxable in the year said income was reported, or whether it was taxable in the year said income was paid.

FINDINGS OF FACT

1. Lerner, Wilfond & Tick, d/b/a Office of C. M. Avery, in which petitioner Arthur E. Wilfond was a partner, filed a New York State partnership income tax return for 1972.

2. Lerner & Wilfond, d/b/a Knight Brothers, in which petitioner Arthur E. Wilfond was a partner, filed a New York State partnership income tax return for 1972.

3. Petitioners, Arthur E. Wilfond and Carolyn S. Wilfond, filed a New York State nonresident income tax return for 1972.

4. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency for 1972, together with a Statement of Audit Changes, imposing an additional income tax for 1972 of \$10,969.21, plus a penalty of \$2,076.55 and interest of \$2,429.68, for a total of \$15,475.44. This was done on the grounds that a partner must include, as income, his distributive share of partnership income, whether or not such income is actually distributed to him.

5. Petitioners duly filed a petition for a redetermination of the imposition of additional tax, penalty and interest, on the grounds that his aforesaid distributive share was not actually paid to him in 1972; rather, he contended that he received such a distributive share in 1974.

6. Petitioners stated that one of the partners in each of the two above-mentioned partnerships refused to release to the other partners their distributive shares of income, apparently as a consequence of then pending litigation. Thereafter, petitioner entered into an agreement, in writing, pursuant to which said distributive share was paid and received in 1974.

7. Petitioners conceded that said distributive share was not reported in their New York State nonresident income tax return for 1974. Further, no evidence was offered by them showing that said distributive share was reported in their personal income tax returns for any subsequent years.

8. Petitioners presented no evidence which would impugn the validity or accuracy of the partnerships' income tax returns for 1972 and, in particular, the computation of the distributive share of income contained therein for each partner.

#### CONCLUSIONS OF LAW

A. That the partnership income tax returns for 1972 filed by Lerner,

Wilfond & Tick, d/b/a Office of C. M. Avery, and Lerner & Wilfond, d/b/a Knight Brothers, accurately set forth the distributive share of income of each of the partners.

B. That a partner's distributive share of partnership income, as reported by the partnership, is includable in that partner's Federal adjusted gross income in the year in which said distributive share is reported by the partnership, notwithstanding its actual payment to a partner in a subsequent year (Internal Revenue Code sections 702 and 706 and Federal Regulations section 1.702-1(a)).

C. That section 637(a) of the Tax Law and pertinent regulation (20 NYCRR 134.1) provide that the New York adjusted gross income of a nonresident partner includes that portion of his distributive share (which entered into his Federal adjusted gross income), which was derived from or connected with New York sources. That petitioner has not shown that any of his distributive share, as reported by the partnership, was not derived from or connected with New York sources.


D. That the petition of Arthur E. Wilfond and Carolyn S. Wilfond is denied, and the Notice of Deficiency issued March 29, 1976 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