

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Jack R. Dick (deceased) :  
and Lynda Dick : 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. :

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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 6th day of June, 1980, he served the within notice of Decision by certified mail upon Jack R. Dick (deceased), and Lynda Dick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack R. Dick (deceased)  
and Lynda Dick  
262 Central Park West  
New York, NY 10023

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  
6th day of June, 1980.

*Joanne Knapp*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Jack R. Dick (deceased) :  
and Lynda Dick : 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. :

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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 6th day of June, 1980, he served the within notice of Decision by certified mail upon David M. Desick 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. David M. Desick  
Davis & Cox  
One State St. Plz.  
New York, NY 10004

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  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

Jack R. Dick (deceased)  
and Lynda Dick  
262 Central Park West  
New York, NY 10023

Dear Mrs. Dick:

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  
David M. Desick  
Davis & Cox  
One State St. Plz.  
New York, NY 10004  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JACK R. DICK and LYNDA DICK : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1968. :

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Petitioners, Jack R. Dick and Lynda Dick, 262 Central Park West, New York, New York 10023, 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. 13145).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 28, 1977 at 1:15 P.M. Petitioner appeared by Davis & Cox (David M. Disick and Harriet S. Stein, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

#### ISSUES

I. Whether petitioners realized a gain from the sale or exchange of stock, during the resident period or nonresident period of the year in which they changed their residence.

II. Whether, if realized during the nonresident period, the gain from the sale or exchange of stock is taxable to New York State.

#### FINDINGS OF FACT

1. On October 22, 1969, petitioners, Jack R. Dick and Lynda Dick, filed New York State income tax resident and nonresident returns for 1968. The Income Tax Bureau had granted an extension of time to file such returns to

October 15, 1969. On the returns, petitioners stated that they were residents of New York from January 1, 1968 through June 19, 1968.

2. On September 25, 1972, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioners in the amount of \$407,734.44, plus interest of \$84,254.24 and penalty of \$20,386.72, minus a credit due petitioners from 1967 of \$117.42, for a net total due of \$512,257.98. This was done on the grounds that the gains from the sale or exchange of stock were realized during the resident period. Other adjustments were also made, including the combining of taxable income as required by section 654(d) of the Tax Law; however, these other adjustments are not at issue.

3. Petitioners changed their residence from New York to Connecticut as of June 20, 1968. The stock at issue was sold on July 29, 1968.

4. The Income Tax Bureau claims that despite the fact that petitioners were no longer New York residents as of the date on which they realized the gain in question, such gain is taxable to New York State, since in addition to owning the shares of stock, petitioner Jack R. Dick had received a salary from the corporation; therefore, his operation of the corporation was his business, and the stock was employed in a business carried on in New York State.

#### CONCLUSIONS OF LAW

A. That the gains from the sale or exchange of stock by petitioners were realized during the nonresident period; therefore, they were reportable on the nonresident return, in accordance with section 654(b) of the Tax Law and 20 NYCRR 148.7.

B. That the gain from the sale or exchange of stock was income from intangible personal property, and does not constitute a gain derived from or connected with New York sources under section 632(b)(2) of the Tax Law and 20 NYCRR 131.5.


C. That the Audit Division is directed to modify the Notice of Deficiency issued on September 25, 1972, in accordance with the aforesaid Conclusions of Law and that, except as so modified, the petition of Jack R. Dick and Lynda Dick is in all other respects denied.

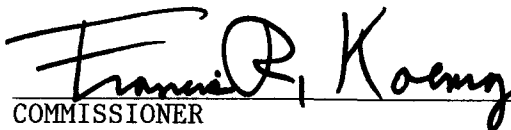
DATED: Albany, New York

STATE TAX COMMISSION

JUN 6 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER