

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Albert A. Marks :
Elizabeth Marks (Deceased) : 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 1971 & 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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Albert A. Marks, Elizabeth Marks (Deceased), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Albert A. Marks
Elizabeth Marks (Deceased)
1 No. Osborne Ave.
Margate, NJ 08402

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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Albert A. Marks :
Elizabeth Marks (Deceased) : 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 1971 & 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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Joseph H. Murphy 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. Joseph H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
One Mony Plaza
Syracuse, NY 13202

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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Albert A. Marks
Elizabeth Marks (Deceased)
1 No. Osborne Ave.
Margate, NJ 08402

Dear Mr. Marks:

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
Joseph H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
One Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
ALBERT A. MARKS, JR. : DECISION
and :
ELIZABETH MARKS (Deceased) :
for Redetermination of Deficiencies or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1971 and :
1972. :

Albert A. Marks, Jr. and Elizabeth Marks (Deceased), 1 North Osborne Avenue, Margate, New Jersey 08402, filed petitions for redetermination of deficiencies or for refund of personal income taxes under Article 22 of the Tax Law for the years 1971 and 1972 (File Nos. 10911 and 14596).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 9, 1976 at 11:15 A.M. Petitioners appeared by Hancock, Estabrook, Ryan, Shove and Hust, Esqs. (Joseph H. Murphy, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (A. Schwartz, Esq., of counsel).

ISSUES

I. Whether petitioner Albert A. Marks, Jr., a member partner of Advest Co., properly allocated his distributive share of partnership income.

II. Whether certain income received by petitioner Albert A. Marks, Jr. from Advest Co. as a "registered representative" constituted his distributive share of partnership profits.

FINDINGS OF FACT

1. Petitioners, Albert A. Marks, Jr. and Elizabeth Marks (Deceased), filed a New York State income tax nonresident return for 1971 and 1972.

2. On March 31, 1975 and March 29, 1976, the Audit Division issued a Notice of Deficiency against petitioners for 1971 and 1972. Said notices of deficiency were based on Albert A. Marks, Jr.'s share, as a partner, of partnership income earned by the partnership, Advest Co., during the years in issue.

3. The nonresident partner allocation schedules in the partnership returns set forth the ordinary income or loss of the nonresident partners and, in addition, set forth the "Payments to partners - salaries and interest".

4. Petitioner Albert A. Marks, Jr. contended that the services performed by him on behalf of Advest Co. were performed solely outside the State of New York. He further contended that payments received by him from Advest Co. and designated as "partner's salary" represented commissions on the purchase and sale of securities for the accounts of his customers, the same as any registered representative employed by the partnership. It is claimed that the aforementioned income was not attributable to New York sources and, therefore, was not taxable to nonresident petitioners.

5. The amounts paid to the general partners, including petitioner, who acted as "registered representatives" represented amounts paid to such partners for services rendered by them to the partnership.

CONCLUSIONS OF LAW

A. That income received by petitioner Albert A. Marks, Jr., from Advest Co. as a "registered representative" during the years in issue constituted his distributive share of partnership profits subject to the

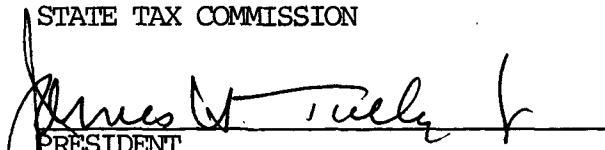
same allocation as the partnership within the intent and meaning of section 637(a) (1) of the Tax Law and 20 NYCRR 134.1. (See Matter of Herbert Jablin et al v. State Tax Commission, 65 AD2d 891, 410 NYS2d 414.)

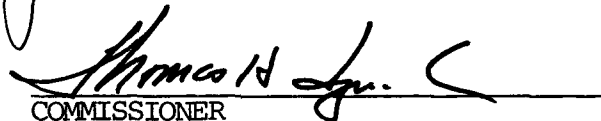
B. That the petitions of Albert A. Marks, Jr. and Elizabeth Marks (Deceased) for 1971 and 1972 are denied and the notices of deficiency issued on March 31, 1975 and March 29, 1976 are sustained.


DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER