

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Clinton V. & Barbara T. Meserole :
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 1970. :

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 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Clinton V. & Barbara T. Meserole, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clinton V. & Barbara T. Meserole
70 Lydecker St.
Englewood, NJ 07631

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
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Clinton V. & Barbara T. Meserole :
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 1970. :

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 2nd day of January, 1980, he served the within notice of Decision by certified mail upon William R. Soons 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. William R. Soons
155 N. Dean St.
Englewood, NJ 07631

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
2nd day of January, 1980.

Joanne Krapp

J. Vredenburg

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

January 2, 1980

Clinton V. & Barbara T. Meserole
70 Lydecker St.
Englewood, NJ 07631

Dear Mr. & Mrs. Meserole:

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
William R. Soons
155 N. Dean St.
Englewood, NJ 07631
Taxing Bureau's Representative

Audit Changes against petitioners, Clinton V. and Barbara T. Meserole, imposing additional personal income tax for 1970 in the amount of \$3,386.55, plus \$293.41 in interest. Accordingly, on September 25, 1972, a Notice of Deficiency was issued to petitioners. The Income Tax Bureau contends that the payments made to Mr. Meserole between August 1, 1970 and December 31, 1970 were fully taxable as New York income. Following a conference, petitioners' tax was recomputed to \$2,782.03, based on the allowance of itemized deductions.

3. In 1968 petitioner Clinton V. Meserole, president of and a major shareholder in the Pacific Insurance Company of New York, Bankers and Shippers Insurance Company of New York, and New Jersey Insurance of New York, effected a sale of his interests in these companies to the Phoenix Assurance Company of New York ("Phoenix"). Phoenix was affiliated with the Continental Insurance Company of New York ("Continental"). Following the sale, petitioner was employed by Continental as a vice-president. Petitioner worked in the offices of Continental until the end of June 1970. He was paid through July 31, 1970, the month of July being "vacation". From August 1, 1970 to December 31, 1970, Continental paid petitioner an additional \$18,750.00.

4. At the formal hearing, petitioner was granted a continuation for the purpose of submitting affidavits in support of the contention that these latter payments were not taxable as New York income. Petitioner has submitted the affidavit of Barbara T. Meserole (co-petitioner and widow of the deceased), together with a letter from counsel. The letter explains that because of the acrimonious relationship between Clinton V. Meserole and Continental, the offices of Continental have refused to cooperate with petitioners in this proceeding, and counsel is unable to secure documentation from the company which would tend to support petitioners' position in the case.

5. Other than the submission described in Finding of Fact "4", no documentary or other evidence was offered.

CONCLUSIONS OF LAW

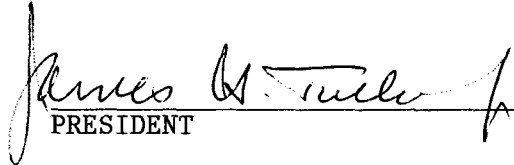
A. That petitioners failed to sustain the burden of proof established by section 689(e) of the Tax Law which requires them to show that the payments received by petitioner Clinton V. Meserole during the period August 1, through December 31, 1970 were not fully taxable as New York income.

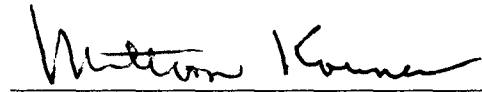
B. That the petition of Clinton V. Meserole and Barbara T. Meserole is denied and the Notice of Deficiency issued on September 25, 1972 is sustained.

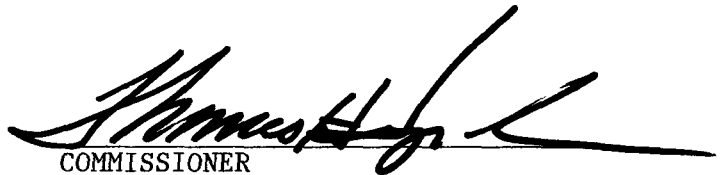
DATED: Albany, New York

STATE TAX COMMISSION

JAN 2 1980


PRESIDENT


COMMISSIONER


COMMISSIONER