

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Sam S. & Mary F. Miller :

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 1974. :

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 27th day of June, 1980, he served the within notice of Decision by certified mail upon Sam S. & Mary F. Miller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sam S. & Mary F. Miller  
510 E. 86th St., Apt. 7-A  
New York, NY 10028

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  
27th day of June, 1980.

Deborah A. Bank

J. J. Vredenburg

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

June 27, 1980

Sam S. & Mary F. Miller  
510 E. 86th St., Apt. 7-A  
New York, NY 10028

Dear Mr. & Mrs. Miller:

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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
SAM S. MILLER and MARY F. MILLER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

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Petitioners, Sam S. Miller and Mary F. Miller, 510 East 86th Street, Apt. 7-A, New York, New York 10028, 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 1974 (File No. 16199).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 7, 1979 at 10:45 A.M. Petitioner Sam S. Miller appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether income received by petitioner Sam S. Miller from the Tennessee law partnership of Ireland, Gibson, Reams and Miller, as the result of his withdrawal from said partnership, constitutes income taxable to New York State, where said income was received subsequent to a change from nonresident to resident status.

#### FINDINGS OF FACT

1. Petitioners, Sam S. Miller and Mary F. Miller, filed a New York State Combined Income Tax Return for the year 1974 whereon they reported a change of residence from the State of Tennessee to New York State on June 14, 1974. In

conjunction with said return, petitioner Sam S. Miller filed a Schedule for Change of Resident Status whereon he reported partnership income earned during his nonresident period of \$25,760.00, (which petitioner contended was actually \$26,760.00 but was incorrectly transcribed) as nontaxable for New York State personal income tax purposes.

2. On December 17, 1975, as the result of petitioner's answers to various inquiry letters concerning the nature of his partnership interest, the Income Tax Bureau issued a Statement of Refund Adjustment to petitioners whereon their claimed refund of \$1,084.32, as computed on their return, was reduced to \$178.77. The Income Tax Bureau's basis for said adjustment was that since the total amount of petitioner Sam S. Miller's income from the Tennessee law partnership of Ireland, Gibson, Reams and Miller was not fixed and determinable as of the date of change of residence, it is not accruable to his period of nonresidence. Accordingly, it held that \$7,029.44 received during petitioner's resident period is taxable to New York State. Furthermore, it held that losses of \$753.00, derived from three other partnerships, were also attributable to petitioners' resident period, and therefore computed petitioners' additional New York taxable income of \$6,276.00, by offsetting the income from the Tennessee law partnership against the losses from the three other partnerships.

3. Petitioners, through subsequent correspondence with the Income Tax Bureau, protested the adjustment of \$905.55 to their claimed refund and were ultimately issued a formal notice of disallowance by the Audit Division on July 26, 1976.

4. Petitioner Sam S. Miller, while a resident of Tennessee, terminated his interest in the Tennessee law partnership of Ireland, Gibson, Reams and Miller on May 31, 1974. As a result, the value of his interest in the partnership was computed under the terms of the partnership agreement dated December 12,

1973. Such value was determined under said agreement as the total of petitioner's capital account and income account as of the date of withdrawal. Additionally, such value included the withdrawing partner's proportionate share of any fees received by the continuing partnership subsequent to the withdrawal of the partner, for work in process at the time of such partner's withdrawal.

5. Of the total amount due petitioner Sam S. Miller from the partnership, \$7,029.44 was paid to him subsequent to his change of residence to New York State. He contended that it was not paid at the time of his withdrawal due to a lack of liquid capital in the partnership and the possibility that amounts due the firm from clients might not be paid.

6. During the course of the hearing held herein, the Audit Division argued that the income derived from the Tennessee partnership, which was received during petitioner's resident period, is taxable to New York State rather than accruable to petitioner's nonresident period since the amount "was not fixed and determinable" as of the date of the change of residence.

#### CONCLUSIONS OF LAW

A. That section 654(c)(2) of the Tax Law states in part that:

If an individual changes his status from nonresident to resident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status...

Accordingly, the income derived by petitioner Sam S. Miller from the Tennessee law partnership of Ireland, Gibson, Reams and Miller, as the result of his withdrawal from said partnership, is accruable to his nonresident period and not taxable to the State of New York for personal income tax purposes.

B. That when a change of residence occurs, an individual, regardless of the method of accounting he normally employs, must include in New York taxable income for the portion of the year prior to such change any items of income,

gain, loss or deduction that would be required to be included in a Federal return filed for the same period on the accrual basis (20 NYCRR 148.10(e)).

That Treasury Regulation 1.446-1(c)(ii) provides for the accrual of income "...when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy".

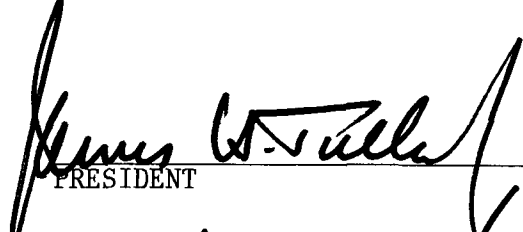
C. That other partnership losses of \$753.00 are allowable losses attributable to petitioner's resident period in accordance with the Statement of Refund Adjustment issued to petitioners on December 17, 1975.

D. That the petition of Sam S. Miller and Mary F. Miller is granted and the Audit Division is hereby directed to modify the Statement of Refund Adjustment dated December 17, 1975 to be consistent with the decision rendered herein.

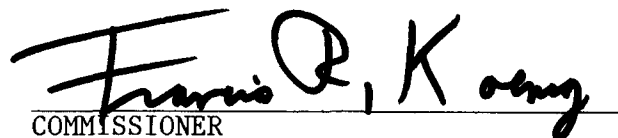
DATED: Albany, New York

JUN 27 1980

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER