

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Welles & Ann Murphey :
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 1968 & 1969. :

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 Welles & Ann Murphey, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Welles & Ann Murphey
Box 439
Nokomis, FL
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 :
Welles & Ann Murphey :
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 1968 & 1969. :

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 John O'Shea 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. John O'Shea
10 E. 40th St.
New York, NY

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 Knapp

J. Vredenburg

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

January 2, 1980

Welles & Ann Murphey
Box 439
Casey Key
Nokomis, FL

Dear Mr. & Mrs. Murphey:

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
John O'Shea
10 E. 40th St.
New York, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WELLES MURPHEY, SR. and ANN MURPHEY : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1968 and 1969. :

Petitioners, Welles Murphey, Sr. and Ann Murphey, Box 439, Casey Key, Nokomis, Florida, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969 (File No. 01945).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 7, 1972 at 9:15 A.M. Petitioners appeared by John O'Shea, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan, Esq., of counsel).

ISSUE

Whether the gain derived from the sale of a seat on the New York Stock Exchange was subject to personal income tax.

FINDINGS OF FACT

1. Petitioners, Welles Murphey, Sr. and Ann Murphey, timely filed joint New York State income tax nonresident returns for 1968 and 1969.
2. On March 29, 1971, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1967, 1968 and 1969, asserting personal income tax of

\$3,391.41, plus interest of \$416.31, for a sum of \$3,807.72. Said Notice was issued on the grounds that petitioners failed to increase their New York income for 1967 by petitioners' share of the New York City unincorporated business tax deduction paid by the partnership Murphey, Marseilles & Smith, and that the installment gain on the sale of petitioner Welles Murphey, Sr.'s New York Stock Exchange seat (the "seat") was subject to New York personal income tax for 1968 and 1969.

Petitioners paid that portion of the tax and interest which was related to 1967.

3. Petitioner Welles Murphey, Sr. was a resident of Connecticut and Florida during 1967. He was a general partner of Murphey, Marseilles & Smith, a stock-brokerage firm doing business solely within New York State. He contributed the use of his seat to said firm, which seat represented his capital contribution. The firm paid Mr. Murphey 6% interest on the value of the seat. The partnership agreement which was dated January 1, 1962 and which was later amended provided the following:

Said membership shall be the absolute property of the partner and neither the partnership nor the other partners shall have any interest therein, and any increase or decrease in the value thereof shall be for his account and not for the account of the partnership.

The agreement also provided the following:

That the membership shall be an asset of the partnership insofar as may be necessary for the protection of the creditors of the partnership or for the purpose of making good any impairment of the capital of the partnership to the extent to which said partner may be liable to other parties.

4. Petitioner Welles Murphey, Sr. retired as a general partner on June 27, 1967, and immediately thereafter became a limited partner. On June 21, 1967, he sold his seat and derived therefrom a profit of \$265,000.00, which he elected to report on the installment basis. He received no payments on said seat during 1967, but did receive payments in 1968 and 1969 in the respective amounts of \$25,000.00 and \$20,000.00. The profit or long-term capital gain on the collections received in 1968 and 1969 was \$17,905.00 and \$14,324.00, respectively.

CONCLUSIONS OF LAW

A. That the seat was intangible personal property which had a business situs in New York State, and the gain on the sale thereof was subject to personal income tax (People ex rel. Whitney v. Graves, 299 U.S. 366 (1937)).

B. That the petition of Welles Murphey, Sr. and Ann Murphey is denied, and the Notice of Deficiency issued on March 29, 1971 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER