

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Philip F. & Hope A. McLellan :

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 1967,1968,1969. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Philip F. & Hope A. McLellan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip F. & Hope A. McLellan  
New Harrisville Rd.  
Dublin, NH 03444

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  
Philip F. & Hope A. McLellan :  
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 1967, 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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Glen W. Berwick 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. Glen W. Berwick  
Peat, Marwick, Mitchell & Co.  
100 Constitution Plaza  
Hartford, CT 06103

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

Philip F. & Hope A. McLellan  
New Harrisville Rd.  
P.O. Box 58  
Dublin, NH 03444

Dear Mr. & Mrs. McLellan:

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  
Glen W. Berwick  
Peat, Marwick, Mitchell & Co.  
100 Constitution Plaza  
Hartford, CT 06103  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
PHILIP F. MC LELLAN and HOPE A. MC LELLAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1967, 1968 and	:	
1969.	:	

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Petitioners, Philip F. Mc Lellan and Hope A. Mc Lellan, New Harrisville Road, P.O. Box 58, Dublin, New Hampshire 03444, 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 1967, 1968 and 1969 (File No. 10912).

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 Peat, Marwick, Mitchell & Co. (Glen W. Berwick, CPA). The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

Whether petitioner Philip F. Mc Lellan, a member partner of Advest Co., properly allocated his distributive share of partnership income.

FINDINGS OF FACT

1. Petitioners, Philip F. Mc Lellan and Hope A. Mc Lellan, filed a New York State income tax nonresident return for 1967, 1968 and 1969.

2. On January 27, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1967 through 1969. Said Notice of Deficiency was based on a recomputation of Philip F. Mc Lellan's share, as a partner, of partnership income earned by the partnership Advest Co. during the years at issue.

Petitioners timely filed a petition for redetermination of the aforesaid deficiency.

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, namely salaries and interest. Said schedules also indicated the amount of New York income to be reported on the income tax return of each nonresident member partner.

CONCLUSIONS OF LAW

A. That petitioner Philip F. Mc Lellan's proportionate share of partnership income for the years in issue from the partnership Advest Co. (as determined in the State Tax Commission decision in the Matter of the Petition of Advest Co., signed on this date) was correctly recomputed by the Audit Division.

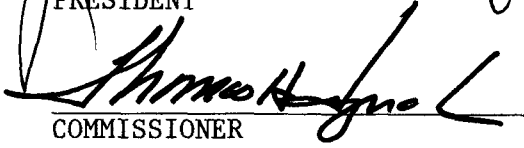
B. That the petition of Philip F. Mc Lellan and Hope A. Mc Lellan for 1967, 1968 and 1969 is granted to the extent indicated in Conclusions of Law "B" in the Matter of the Petition of Advest Co. and is in all other respects denied.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER