

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
John H. & Carolyn S. Schultz :
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 1973 - 1975. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

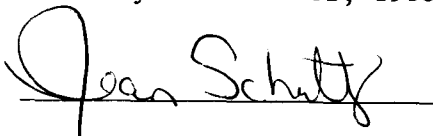
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon John H. & Carolyn S. Schultz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

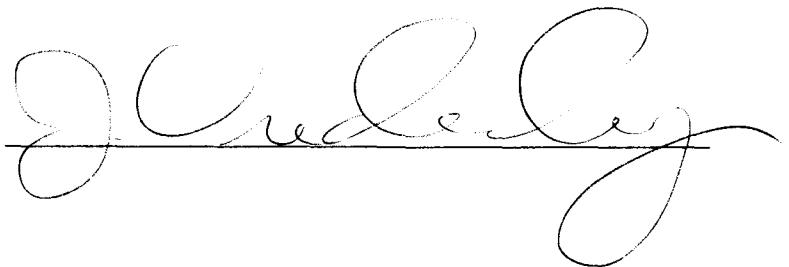
John H. & Carolyn S. Schultz
c/o Abrahams Bros.
119 W. 40th St.
New York, NY 10018

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
12th day of December, 1980.


Jean Schutt


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

John H. & Carolyn S. Schultz :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
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State of New York
County of Albany

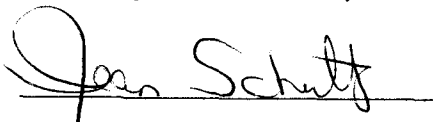
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon T. Gorman Reilly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

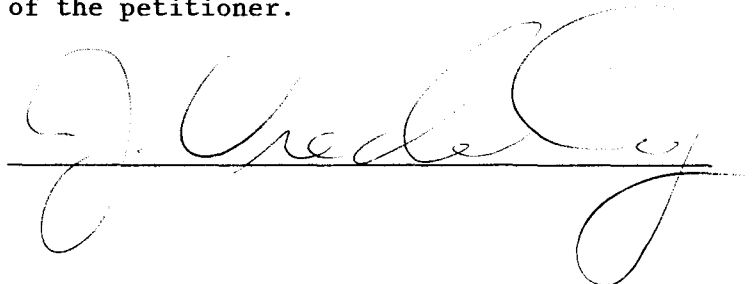
Mr. T. Gorman Reilly
Hahn, Hessen, Margolis & Ryan
350 Fifth Ave.
New York, NY 10118

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
12th day of December, 1980.


John Schultz


Jay Vredenburg

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

December 12, 1980

John H. & Carolyn S. Schultz
c/o Abrahams Bros.
119 W. 40th St.
New York, NY 10018

Dear Mr. & Mrs. Schultz:

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
T. Gorman Reilly
Hahn, Hessen, Margolis & Ryan
350 Fifth Ave.
New York, NY 10118
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN H. SCHULTZ and CAROLYN S. SCHULTZ : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1973, 1974 and 1975. :

Petitioners, John H. Schultz and Carolyn S. Schultz, c/o Abrahams Brothers, 119 West 40th Street, New York, New York 10018, 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 1973, 1974 and 1975 (File No. 19670).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 20, 1979 at 1:15 P.M. Petitioners appeared by Hahn, Hessen, Margolis & Ryan, Esqs. (T. Gorman Reilly, Esq., of counsel) and by Main Lafrentz & Co. (Jay L. Dengrove, CPA). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioners John H. Schultz and Carolyn S. Schultz are taxable as residents or nonresidents of New York State.

II. Whether petitioners, if determined to be taxable as nonresidents of New York State, are entitled to allocate part of John H. Schultz's distributive share of partnership income received from Abrahams Brothers to sources outside New York State.

FINDINGS OF FACT

1. Petitioners, John H. Schultz and Carolyn S. Schultz, timely filed

joint New York State nonresident income tax returns for the years 1973, 1974 and 1975. For the years 1971 and 1972 petitioners timely filed joint resident income tax returns.

2. On April 14, 1977 the Audit Division issued a Statement of Audit Changes against petitioners, John H. Schultz and Carolyn S. Schultz, for the tax years 1973, 1974 and 1975 asserting that additional taxes were due for each of said years for the following reasons:

"1. Allocation of partnership income and NYS modifications is disallowed since the allocation of the Abraham Business income has been disallowed.

2. You are held to be a resident of New York State for the years 1973, 1974, and 1975 since you failed to provide information requested."

Accordingly, a Notice of Deficiency was issued against petitioners John H. Schultz and Carolyn S. Schultz, dated April 14, 1977, for the tax years 1973, 1974 and 1975 amounting in the aggregate to \$10,309.20, together with interest thereon of \$1,440.30, for a total deficiency of \$11,749.50.

3. Petitioners John H. Schultz and Carolyn S. Schultz timely filed a petition for redetermination of said deficiency or for refund of tax paid for the taxable years 1973, 1974 and 1975.

4. On December 1, 1972 petitioners sold their family residence located in Huntington, New York, and purchased a new principal residence in Basking Ridge, New Jersey. After December 1, 1972 and during the years at issue, petitioners did not maintain a residence or abode within New York State.

CONCLUSIONS OF LAW

A. That petitioners, John H. Schultz and Carolyn S. Schultz, were not domiciled in or taxable as residents of New York State for the years 1973, 1974 and 1975 within the meaning and intent of section 605(a) of the Tax Law.

B. That petitioner John H. Schultz's proportionate share of partnership income derived from New York State sources for the years 1973, 1974 and 1975

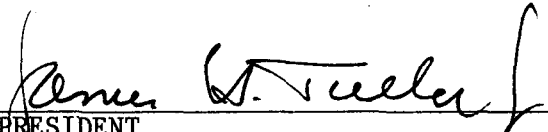
from the partnership Abrahams Brothers (as determined in the State Tax Commission decision in the Matter of the Petition of Abrahams Brothers, signed on this date) was correctly reported by petitioners on their respective nonresident returns.

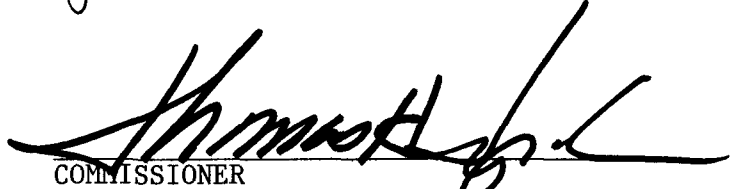
C. That the petition of John H. Schultz and Carolyn S. Schultz for 1973, 1974 and 1975 is granted and the Notice of Deficiency issued April 14, 1977 is cancelled.

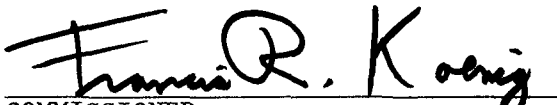
DATED: Albany, New York

STATE TAX COMMISSION

DEC 12 1980


PRESIDENT


COMMISSIONER


COMMISSIONER