

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Ralph P. & Barbara J. Whitehead :  
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 1965 - 1968. :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Ralph P. & Barbara J. Whitehead, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ralph P. & Barbara J. Whitehead  
107 Bayview Ave.  
Port Washington, NY 11050  
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  
21st day of March, 1980.

Joanne Knapp

A large, stylized handwritten signature, likely of Jay Vredenburg, written in black ink. The signature is fluid and cursive, with a large initial 'J' and a long, sweeping underline.

STATE OF NEW YORK  
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of  
Ralph P. & Barbara J. Whitehead :  
for Redetermination of a Deficiency or a Revision :  
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Personal Income Tax :  
under Article 22 of the Tax Law  
for the Years 1965 - 1968. :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Anthony Finazzo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

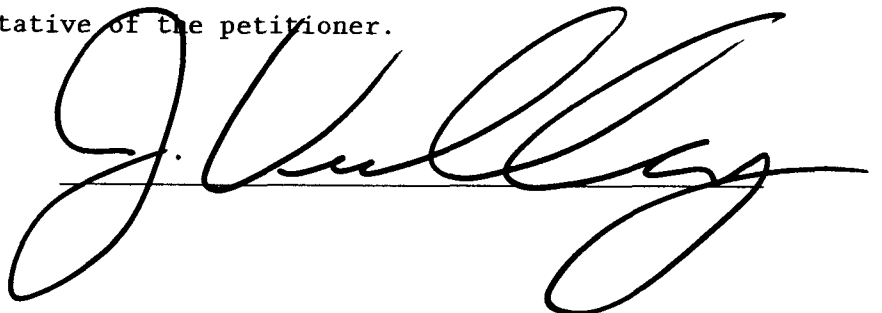
Mr. Anthony Finazzo  
Wolf & Company CPA's  
7600 Jericho Turnpike  
Woodbury, NY 11797

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  
21st day of March, 1980.

Joanne Knapp



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

March 21, 1980

Ralph P. & Barbara J. Whitehead  
107 Bayview Ave.  
Port Washington, NY 11050

Dear Mr. & Mrs. Whitehead:

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  
Anthony Finazzo  
Wolf & Company CPA's  
7600 Jericho Turnpike  
Woodbury, NY 11797  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

RALPH P. WHITEHEAD and BARBARA J. WHITEHEAD : DECISION

for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1965, 1966, 1967 :  
and 1968.

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Petitioners, Ralph P. Whitehead and Barbara J. Whitehead, 107 Bayview Avenue, Port Washington, New York 11050, 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 1965, 1966, 1967 and 1968 (File No. 01411).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1976 at 10:45 A.M. Petitioners appeared by Wolf & Company (Anthony Finazzo and Alexander Zabroski, CPAs). The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the income from a trust in Great Britain, distributed net of British income taxes withheld by the trust, should be reported net or gross on New York State income tax returns for the years 1965 through 1968.

II. Whether a New York resident must add to the Federal adjusted gross income reported on his Federal income tax return, the amount of deduction for foreign income taxes claimed on the Federal income tax return.

FINDINGS OF FACT

1. Petitioners, Ralph P. Whitehead and Barbara J. Whitehead, filed combined New York State resident income tax returns for 1965, 1966, 1967 and 1968.

2. On June 15, 1970, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Audit Changes against petitioners, Ralph P. Whitehead and Barbara J. Whitehead, asserting additional taxes as follows:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1965	\$1,267.40	\$316.85	\$1,584.25
1966	1,201.48	228.28	1,429.76
1967	1,231.60	160.11	1,391.71
1968	1,200.77	84.05	1,284.82
TOTAL	<u>\$4,901.25</u>	<u>\$789.29</u>	<u>\$5,690.54</u>

3. The Statement of Audit Changes dated June 15, 1970, stated that: "The New York Tax Law makes no provision for the allowance of a credit for taxes paid to a foreign country." Taxes allegedly paid to Great Britain and deducted by petitioners, Ralph P. Whitehead and Barbara J. Whitehead, on their Federal income tax returns were added to Federal adjusted gross income to determine New York State adjusted gross income, as follows:

	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>
NY taxable income per return	\$19,506.92	\$14,991.35	\$14,521.97	\$14,424.80
Adjustment	<u>12,674.00</u>	<u>12,015.60</u>	<u>12,363.85</u>	<u>10,210.91</u>
Correct NY taxable income	<u>\$32,180.92</u>	<u>\$27,006.95</u>	<u>\$26,885.82</u>	<u>\$24,635.71</u>

4. On December 26, 1969, petitioners, Ralph P. Whitehead and Barbara J. Whitehead, executed a Consent Fixing Period of Limitation Upon Assessment of Personal Income Taxes which extended the period to assess taxes for 1966 to April 15, 1971. No other extension was adduced at the formal hearing.

5. On July 20, 1970, Ralph P. Whitehead filed a petition for redetermination of the income tax on behalf of himself and his wife, Barbara J. Whitehead, for 1965, 1966, 1967 and 1968.

6. Petitioner Ralph P. Whitehead is beneficiary of the Thomas Whitehead Trust, a foreign testamentary trust, created under the will of his deceased uncle, Thomas Whitehead. Under the terms of the will, petitioner Ralph P. Whitehead is entitled to receive the net income of the estate after payment of certain annuities, the expenses of the estate and the expenses of the governing Board of Trustees.

7. The Board of Trustees of the Thomas Whitehead Trust is responsible for paying to the government of Great Britain whatever income or other taxes the trust is liable for under British tax law. Taxes on investments and dividends are deducted at the source.

8. The attorneys for the Trust send annual reports to petitioner Ralph P. Whitehead which detail all income and expenses of the Thomas Whitehead Trust, including the amount of income taxes paid to Great Britain out of Trust income. The net proceeds are remitted to petitioner Ralph P. Whitehead.

9. Petitioners, Ralph P. Whitehead and Barbara J. Whitehead, were residents of the State of New York throughout the tax years 1965 through 1968.

10. Petitioners, Ralph P. Whitehead and Barbara J. Whitehead, filed joint Federal income tax returns in each of the years 1965 through 1968. In schedules attached to the Federal income tax returns (Form 1040), petitioners reported as income from the Trust the gross amount of the Trust income on which the Trust had paid British income taxes. An itemized deduction was taken for taxes reported as having been withheld and paid by the Board of Trustees in Great Britain on the share of the Trust income attributable to petitioner Ralph P. Whitehead.

11. In correspondence regarding petitioners' New York State income tax return for 1966, dated May, 1968, the Income Tax Bureau advised petitioners that, although they had erroneously instructed petitioners to report taxes paid by the Trust as net, no change was necessary on petitioners' tax return since the taxes were reported as an itemized deduction on their Federal income tax return and, consequently, any change on the State return would result in the same tax liability. Accordingly, petitioners' 1966 tax return was accepted as filed.

12. For each of the years 1965 through 1967, petitioners reported on their New York State combined income tax returns the net amount of the Trust income received by petitioner Ralph P. Whitehead from the Thomas Whitehead Trust and reported their Federal itemized deductions less the taxes paid to Great Britain. For 1968, they made no adjustments on their New York income tax returns for taxes paid to Great Britain.

13. At no time during the period under review did petitioner Ralph P. Whitehead have any income from Great Britain other than that from the Trust. He paid no income taxes directly to Great Britain.

14. Petitioners, Ralph P. Whitehead and Barbara J. Whitehead, had their income tax returns prepared by certified public accountants and relied on the advice of the accountants. Petitioners also sought, received and relied on advice from the New York State Income Tax Bureau.

#### CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a resident individual means his Federal adjusted gross income in accordance with section 612(a) of the Tax Law. That the New York itemized deductions of a resident individual means the

total amount of his deductions from Federal adjusted gross income, other than Federal deductions for personal exemptions, in accordance with section 615(a) of the Tax Law. Based on the above, petitioners, Ralph P. Whitehead and Barbara J. Whitehead, improperly reported their Federal adjusted gross income and Federal itemized deductions on their New York State income tax returns for 1965 through 1967. They properly reported their Federal income and deductions for 1968 on their New York income tax return in accordance with the above sections of the Tax Law.

B. That based on the manner in which petitioners reported their income to New York State for tax years 1965 through 1967, petitioners were required to increase their Federal adjusted gross income (as reported on their New York return) by the taxes paid to Great Britain in accordance with section 612(b)(3). That based on the manner in which petitioners reported their deductions to New York State for tax year 1968, petitioners were required to reduce their Federal itemized deductions by the taxes paid to Great Britain in accordance with section 615(c)(1) of the Tax Law.

C. That the Consent Fixing Period of Limitation Upon Assessment of Personal Income Taxes signed by petitioner Ralph P. Whitehead extended the period of assessment of income taxes for the year ended December 31, 1966 to April 15, 1971. The Notice of Deficiency dated June 15, 1970 was timely for the year 1966. The notice was not timely for the year 1965 within the meaning and intent of section 683(a) and section 683(c)(2) of the Tax Law. Assessment of additional tax for the year 1965 should not be made.



D. That the petition of Ralph P. Whitehead and Barbara J. Whitehead is granted to the extent of reducing the deficiency applicable to 1965 by \$1,267.40, plus interest. The Notice of Deficiency dated June 15, 1970 shall be modified to reflect this reduction, and is otherwise sustained. The petition of Ralph P. Whitehead and Barbara J. Whitehead for redetermination of the deficiency in income tax for the years 1966, 1967 and 1968 is denied.

DATED: Albany, New York

MAR 21 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER