

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
William T. & Sibyl L. Golden :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon William T. & Sibyl L. Golden, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William T. & Sibyl L. Golden
40 Wall St.
New York, NY 10005

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
20th day of February, 1981.

Ginnie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
William T. & Sibyl L. Golden :

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 Year 1974. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Roy Gainsburg 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. Roy Gainsburg
Szold, Brandwen, Meyers & Altman
30 Broad St.
New York, NY 10004

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
20th day of February, 1981.

Cornie P. Haglund

J. Vredenburg

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

February 20, 1981

William T. & Sibyl L. Golden
40 Wall St.
New York, NY 10005

Dear Mr. & Mrs. Golden:

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
Roy Gainsburg
Szold, Brandwen, Meyers & Altman
30 Broad St.
New York, NY 10004
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM T. and SIBYL L. GOLDEN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1974.

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 22, 1979 at 10:45 A.M. Petitioners appeared by Szold, Brandwen, Meyers & Altman, Esqs. (Roy Gainsburg, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq., (Paul A. Lefebvre, Esq., of counsel).

Whether the Audit Division allocated to exempt income a reasonable proportion of the taxpayers' expenses which were attributable both to taxable and exempt income.

1. By Notice of Deficiency dated September 26, 1977, the Audit Division asserted a deficiency because of petitioners' failure to add expenses attributable to New York tax exempt income to Federal adjusted gross income in arriving at New York adjusted gross income for the year 1974.

2. Petitioners reported income of \$823,363.00 of which \$400,622.00 was interest on U.S. Treasury Bills.

3. Petitioners' indirect office expenses totalled \$150,869.00 of which the Audit Division allocated \$73,408.00 to tax exempt income, said expenses being allocated in the same proportion as exempt income bore to total income (\$400,622.00 [exempt income] divided by \$823,363.00 [total income] equals 48.65% X \$150,869.00 [total expenses] equals \$73,408.00).

4. Petitioner William T. Golden is an investor, buying and selling securities, primarily equity stocks, for himself and his wife, petitioner Sibyl L. Golden. For this purpose, William T. Golden maintains, together with two other investors, an office at Room 4201, 40 Wall Street, New York, New York 10005. Employed in such office are investment analysts, an accountant, secretaries and clerks. They are all employed, and were so employed in 1974, primarily for the purpose of advising and aiding Mr. Golden and the other two investors in making equity investments for themselves and other members of their families.

5. As stated above, petitioners invest primarily in equity securities. If they did not so invest, Mr. Golden would not operate the office at 40 Wall Street or need to incur the expenses therefor. However, at certain times, such as in 1974, for certain economic, financial or administrative reasons, petitioners did not want or could not have all of their assets invested in equity securities. Consequently, any cash not so invested in equity securities was in 1974 used to purchase U.S. Treasury Bills for petitioners.

6. The purchase and sale of U.S. Treasury Bills, and the decisions relating thereto, are strictly administrative and ministerial acts. No investment analysis is needed or used therefor. A bank is simply instructed to purchase the Bills. It is simpler than opening a savings account. When the Bills

expire, they are automatically renewed by the bank unless instructed otherwise by the 40 Wall Street office.

7. As a result, little or no time of the 40 Wall Street office personnel is spent in connection with the purchase or sale of U.S. Treasury Bills. In 1974, approximately one hour per week was spent by Michael M. Kellen, one of the investment analysts in the office, in connection with the purchase and sale of Treasury Bills. In addition, approximately one hour per week was spent by John T. Shea, the accountant in the office, in this connection. No other time of the office personnel was spent on this matter. The hourly salary rate paid Mr. Kellen in 1974 was \$14.29, so that the total portion of his salary attributable to the purchase and sale of Treasury Bills during the fifty-two weeks of 1974 was \$743.08. Similarly, the hourly salary rate of Mr. Shea in 1974 was \$16.48, so that the total portion of his salary attributable to the purchase and sale of Treasury Bills during the fifty-two weeks of 1974 was \$856.96. Consequently, the total salary of the office staff attributable to the purchase and sale of Treasury Bills in 1974 was \$1,600.04.

8. The total payroll of the 40 Wall Street office in 1974 was \$202,108.75. Thus, .79 percent (\$1,600.04 divided by \$202,108.75) of the office salary in 1974 was attributable to the purchase and sale of U.S. Treasury Bills.

9. Petitioners contended that a more fair and reasonable allocation of expenses would be to attribute .79 percent of total expenses to exempt income, said percentage representing the proportion of office salary exclusively devoted to the purchase and sale of Treasury Bills. (.79 percent X \$150,689.00 = \$1,191.87.) Petitioners accordingly contended that the total addition to Federal adjusted gross income should be \$7,254.00 (\$1,191.87 + \$6,061.90 [direct expenses] = \$7,253.87, rounded off to \$7,254.00).

10. That decision to hold liquid assets as Treasury Bills was made prior to 1974, but is reviewed once or twice per year.

11. Some time is spent by the 40 Wall Street office personnel determining the relative desirability of Treasury Bills of different lengths of maturity.

12. The 40 Wall Street office is maintained for the purpose of managing and investing the assets of the associates. The proportion of the firm's assets which are held in liquid form to wit: as Treasury Bills, is determined by the firm's decisions to buy or sell equity securities based upon its analysis and judgement concerning the investment market as a whole. A decision to buy or sell stock necessarily entails a change in the firm's position in Treasury Bills.

13. Office expenses of the 40 Wall Street office were divided by the associates among themselves according to the market value of the assets in the portfolio of each associate, including equity securities and Treasury Bills.

CONCLUSIONS OF LAW

A. That petitioners' proposed allocation of indirect expenses is not reasonable under the facts because the amount of time allegedly spent by the office employees on the purely ministerial and administrative tasks exclusively relating to the purchase and sale of Treasury Bills bears no logical connection to the indirect expenses fairly allocable to tax exempt income. Under petitioners' theory, the hours exclusively spent on Treasury Bills would be direct expenses, i.e., those related to particular class of income. Such expenses do not reflect the portion of indirect expenses attributable to exempt or taxable income, especially since no evidence was offered indicating the comparable direct expenses attributable to taxable income.

B. That the payroll expenses incurred by virtue of the purely ministerial and administrative functions related to the purchase and sale of Treasury Bills were not the only payroll expenses incurred with regard to Treasury Bills, since the investment analysis functions of the office and the decisions resulting therefrom determined the proportion of assets held in liquid form as Treasury Bills. A decision to buy or sell equity securities was concomitantly a decision to alter the firm's liquidity and thus buy or sell Treasury Bills.

C. The Audit Division's allocation of indirect expenses was fair and reasonable under the facts presented especially considering that the associates allocated office expenses among themselves in a manner similar to that utilized by the Department in allocating expenses attributable to exempt and taxable income (20 NYCRR 116.2[e], Example 1).

D. The Notice of Deficiency is sustained and the petition of William T. and Sibyl L. Golden is denied.

DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER