

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert D. & Reva C. Sidel :

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 :
1971 & 1972.

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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Robert D. & Reva C. Sidel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert D. & Reva C. Sidel
3456 S. Ocean Dr., Apt. 601
Palm Beach, FL 33480

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
31st day of July, 1981.

Ernie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert D. & Reva C. Sidel :

: 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 :
1971 & 1972.

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 31st day of July, 1981, he served the within notice of Decision by certified mail upon S. George Trager the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

S. George Trager
301 Arthur Godfrey Rd.
Miami Beach, FL 33140

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
31st day of July, 1981.

Bernice G. Hagelund

J. Vredenburg

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

July 31, 1981

Robert D. & Reva C. Sidel
3456 S. Ocean Dr., Apt. 601
Palm Beach, FL 33480

Dear Mr. & Mrs. Sidel:

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
S. George Trager
301 Arthur Godfrey Rd.
Miami Beach, FL 33140
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions
of
ROBERT D. SIDEL and REVA C. SIDEL
for Redetermination of Deficiencies or for
Refunds of Personal Income Tax under Article 22:
of the Tax Law for the Years 1971 and 1972.

DECISION

Petitioners, Robert D. Sidel and Reva C. Sidel, 3456 South Ocean Drive, Apt. 601, Palm Beach, Florida 33480, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File Nos. 12391 and 15506).

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 August 14, 1979 at 10:45 A.M. Petitioners appeared by S. George Trager, Esq. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether interest income and capital gain income received by petitioner Robert D. Sidel during 1971 and 1972 from the partnership of Monness, Williams & Sidel constituted income from New York State sources and therefore taxable to a nonresident of New York State.

FINDINGS OF FACT

1. Petitioners, Robert D. Sidel and Reva C. Sidel, timely filed nonresident income tax returns for the years 1971 and 1972. On said returns, petitioners reported as New York source income only the distributive share of ordinary

income earned by Robert D. Sidel from the partnership of Monness, Williams & Sidel (hereinafter "partnership"). Petitioner Robert D. Sidel's distributive share of partnership ordinary income for the year 1971 amounted to \$48,007.46; for the year 1972 his share of ordinary income, as reported on the original partnership return, amounted to \$64,909.57. The partnership return for 1972 was subsequently amended and petitioner Robert D. Sidel's distributive share of ordinary income was reduced by \$1,106.00 to \$63,803.57.

2. In addition to the amounts of ordinary income referred to in Finding of Fact "1", supra, the partnership returns of Monness, Williams & Sidel reported, as petitioner Robert D. Sidel's distributive share, the following items and amounts:

<u>ITEM</u>	<u>1971</u>	<u>1972 *</u>
Salary and Interest	\$15,000.00	\$15,000.00
Qualifying Dividends	129.01	49.29
Short-Term Capital Gain (Loss)	1,590.77	(2,492.88)
Long-Term Capital Gain (Loss)	(434.69)	18,352.27
N.Y.S. and N.Y.C. Unincorporated Business Tax	6,042.61	8,981.77

* The figures shown in the 1972 column are those amounts as reported on the amended return.

3. On April 11, 1975, petitioners were issued a Notice of Deficiency for the year 1971, asserting that additional personal income tax of \$1,988.81 was due together with interest. Said Notice of Deficiency was based on an explanatory Statement of Audit Changes, also dated April 11, 1975, wherein petitioners' total New York income was increased by \$16,373.43. Said increase was computed by considering as New York source income petitioner Robert D. Sidel's share of the following items of partnership income or loss:

Salary	\$15,000.00
Short-term capital gain	1,590.77
½ of long-term capital loss	(217.34)
Total	<u>\$16,373.43</u>

4. On April 14, 1976 petitioners were issued a Notice of Deficiency for the year 1972, asserting that additional personal income tax of \$4,795.20 was due together with interest. Said Notice of Deficiency was also based on an explanatory Statement of Audit Changes wherein total New York income was increased by \$32,441.25 and New York itemized deductions subject to the "B over A formula" (total New York income divided by total New York income computed as a resident times New York itemized deductions) were reduced by \$534.00. Said increase in total New York income was computed by considering as New York source income petitioner Robert D., Sidel's share of the following items of partnership income or loss:

Salary -- \$15,000.00 less	
\$1,106.00 reduction in ordinary	
income per Finding of Fact	
"1", <u>supra</u>	\$13,894.57
Dividends	49.29
Unincorporated business taxes	8,981.77
½ of excess of long-term capital	
gains over short-term losses	
(½ of 18,352.27 - 2,492.88)	7,929.69
20% of 7,929.69	1,585.93
Total	<u>\$32,441.25</u>

The \$534.00 reduction in New York itemized deductions subject to apportionment was comprised of a \$50.00 reduction in life insurance premiums and a \$484.00 reduction due to the section 615(c)(4) modification for allocable expenses.

5. At the hearing held herein counsel for the Audit Division conceded that the portion of the increase in total New York income for the year 1972 due to New York State and New York City unincorporated business taxes was a duplication of a modification already made by petitioners on their return (transcript, p. 26).

6. Petitioner Robert D. Sidel, during the years at issue, was a limited partner of the firm of Monness, Williams & Sidel, holding a 4.5 percent interest in partnership profits and/or losses. Pursuant to the partnership agreement, he was not entitled to receive a salary, however, he was entitled to "...receive interest on his capital account at the rate of ten (10%) percent per annum or the maximum rate allowed by the New York Stock Exchange, whichever shall be lower".

7. Petitioners argue that as nonresidents of New York State they are not subject to New York personal income tax on the interest received from the partnership on Robert D. Sidel's capital account or the capital gains received from said partnership. The partnership returns for the years 1971 and 1972 did not allocate any partnership income to sources outside New York State.

CONCLUSIONS OF LAW

A. That the interest income and capital gain income received by petitioner Robert D. Sidel from the partnership during the years 1971 and 1972 constituted income from New York State sources within the meaning and intent of sections 632(b)(2) and 637(b)(1) of the Tax Law.

B. That for the year 1971 the Audit Division incorrectly reduced net long-term capital losses by 50 percent before applying said losses to net short-term capital gains. Accordingly, the net adjustment to total New York income for the year 1971 is reduced by \$217.35, from \$16,373.43 to \$16,156.08.

C. That for the year 1972 the Audit Division incorrectly included in the net adjustment to total New York income a modification of \$8,981.77 for New York State and New York City unincorporated business taxes (see Finding of Fact "5", supra). Accordingly, the net adjustment to total New York income for the year 1972 is reduced by \$8,981.77, from \$32,441.25 to \$23,459.48. Also, the

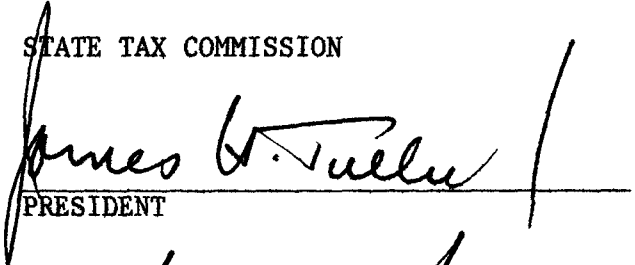
modification for allocable expenses and apportionment of New York itemized deductions must be recomputed due to the decrease in total New York income.

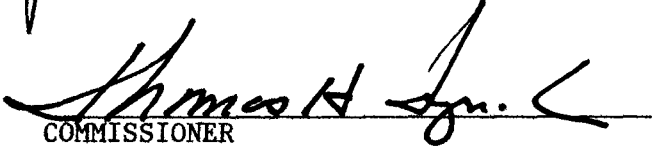
D. That the petitions of Robert D. Sidel and Reva C. Sidel are granted to the extent indicated in Conclusions of Law "B" and "C"; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CLAIM CHECK
NO.

☐ HOLD

DATE

[Signature]
ST NOTICED

~~2ND NOTICE~~

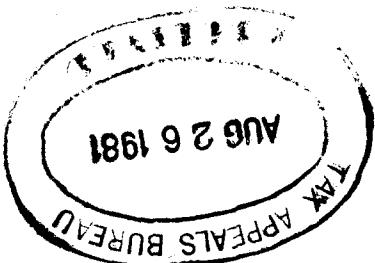
~~RETURN~~

Detached from
PS Form 3849-A
MAY 1979

Robert D. & Reva C. Sidel
3456 S. Ocean Dr., Apt. 601
Palm Beach, FL 33480

BID 54 140610N1 08/06/81

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD



8916276

9-881
B/A

REQUEST FOR BETTER ADDRESS

F. Dec.

Requested by <i>G. Vredenburg</i>	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>9-8-81</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>114-12-7821</i> <i>054-38-3408</i>	Date of Petition <i>75-10-30</i>
Name <i>Robert D. & Reva C. Sidel</i>	
Address <i>3456 South Ocean Drive</i> <i>Apt. 601</i> <i>Palm Beach, FLA. 33480</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>054-38-3408</i>

Searched by <i>SL</i>	Section <i>MI</i>	Date of Search <i>9-16-81</i> <i>9-17-81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

July 31, 1981

Robert D. & Reva C. Sidel
3456 S. Ocean Dr., Apt. 601
Palm Beach, FL 33480

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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
S. George Trager
301 Arthur Godfrey Rd.
Miami Beach, FL 33140
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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modification for allocable expenses and apportionment of New York itemized deductions must be recomputed due to the decrease in total New York income.

D. That the petitions of Robert D. Sidel and Reva C. Sidel are granted to the extent indicated in Conclusions of Law "B" and "C"; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER