

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Orlando P. & Anne S. Thomas :

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 1971. :

State of New York

County of Albany

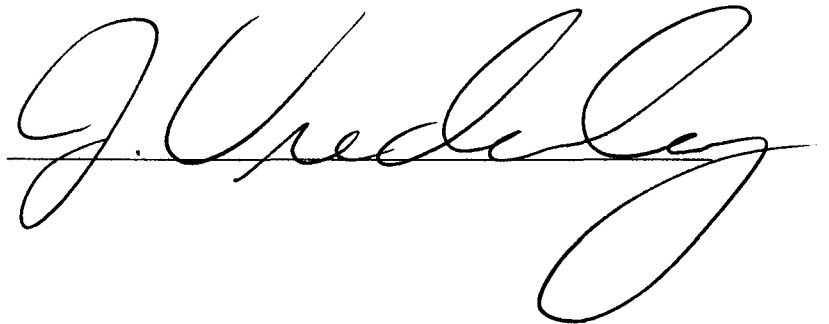
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January, 1981, he served the within notice of Decision by certified mail upon Orlando P. & Anne S. Thomas, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Orlando P. & Anne S. Thomas
512 Woodside Dr.
Akron, OH 44303

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
9th day of January, 1981.

A large, stylized handwritten signature, likely of Jay Vredenburg, is written over a horizontal line. The signature is cursive and flows from left to right, with a large loop at the end.

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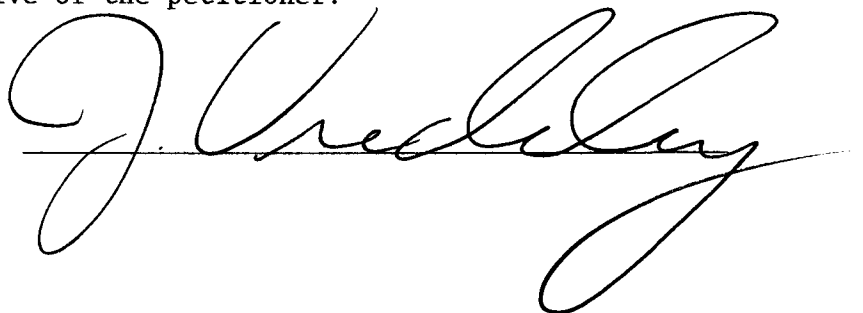
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January, 1981, he served the within notice of Decision by certified mail upon Oded Aboodi the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Oded Aboodi
Arthur Young & Co.
277 Park Ave.
New York, NY 10017

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
9th day of January, 1981.



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

January 9, 1981

Orlando P. & Anne S. Thomas
512 Woodside Dr.
Akron, OH 44303

Dear Mr. & Mrs. Thomas:

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
Oded Aboodi
Arthur Young & Co.
277 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ORLANDO P. THOMAS and ANNE S. THOMAS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

Petitioners, Orlando P. Thomas and Anne S. Thomas, 512 Woodside Drive, Akron, Ohio 44303, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 13436).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 18, 1977 at 9:30 A.M. Petitioners appeared by Arthur Young & Company, CPA's. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioners are liable for the additional income tax on a distribution of income from a qualified profit sharing plan, where they were non-residents of New York at the time of distribution.

FINDINGS OF FACT

1. Petitioners, Orlando P. Thomas and Anne S. Thomas, timely filed a New York State Income Tax Resident Return (Form IT-201) for 1971, and a New York State Income Tax Nonresident Return (Form IT-203) for the same year, the latter for the period in which they were nonresidents.

2. On January 12, 1973, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, stating that a capital gains distribution of \$59,630.00, which consisted of a distribution from a qualified profit sharing plan to petitioner Orlando P. Thomas, was taxable. Accordingly, on March 31, 1975, the Bureau issued a Notice of Deficiency in the amount of \$8,894.65, plus interest of \$1,579.96, for a total deficiency of \$10,474.61.

3. On May 30, 1975, petitioners timely filed a petition seeking a redetermination of personal income taxes due for 1971.

4. Petitioner Orlando P. Thomas was a nonresident of New York for the period 1955 through 1967. He became a resident in 1968 until he departed with his wife to take a new job position in Akron, Ohio, on or about October 1, 1971. Thereafter, both he and his wife again were nonresidents.

5. Petitioner Orlando Thomas, prior to becoming a New York resident, was employed by Sinclair Oil Company ("Sinclair") and was a participant in Sinclair's Employee Savings Plan ("the plan"), a qualified profit sharing plan which had been instituted in 1953. During 1969, Sinclair merged with Atlantic Richfield Co. ("Atlantic"), and the plan became known as the Atlantic Richfield Savings Plan.

6. By reason of Mr. Thomas' termination from employment with Atlantic on September 30, 1971, so he could take the new position in Ohio, he received from the plan (in which he had previously become vested) the sum of \$119,260.00, of which 50 percent (or \$59,630.00) was subject to tax as a long-term capital gain.

7. Although petitioners changed residence on or about October 1, 1971, and were nonresidents thereafter, the right of petitioner Orlando Thomas to receive this distribution from the plan did not accrue until the end of the month following the date of the termination of his employment with Atlantic

(which in this case was October 31, 1971), in accordance with the terms and conditions of the plan's trust indenture. Mr. Thomas did not actually receive this distribution until December of 1971.

8. Petitioners contend that the monetary distributions from the plan consisted of income from an intangible asset and that, as such, it was not income from property employed in a business, trade, profession or occupation with a New York source, especially where the situs of the trust plan was in a foreign state.

CONCLUSIONS OF LAW

A. That the distribution which petitioner Orlando P. Thomas received from the Atlantic Richfield Savings Plan did not constitute an annuity within the meaning and intent of 20 NYCRR 131.4(d) (2).

B. That petitioner Orlando P. Thomas has failed to sustain the burden of proof required to show that the distribution received from the Atlantic Richfield Savings Plan was not related to services performed by him in connection with his employment in New York. Therefore, the aforementioned distribution constitutes income from New York sources pursuant to section 632(b) (1) (B) of the Tax Law.

C. That the petition of Orlando P. Thomas and Anne S. Thomas is denied and the Notice of Deficiency issued on March 31, 1975 is sustained.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

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