

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Edward J. & Bessie Zeitlin :  
: 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 - 1974. :

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Edward J. & Bessie Zeitlin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward J. & Bessie Zeitlin  
10295 Collins Avenue  
Apt. #607  
Bal Harbour, FL 33154

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  
14th day of August, 1981.

*Conrad P. Haggard*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Edward J. & Bessie Zeitlin :  
: AFFIDAVIT OF MAILING  
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Tax under Article 22 of the Tax Law for the Years :  
1971 - 1974. :

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Alex Hollender the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alex Hollender  
Tanklow & Hollender  
450 Seventh Ave.  
New York, NY 10001

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  
14th day of August, 1981.

*Carrie P. Hagelund*

*Jay Vredenburg*

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

August 14, 1981

Edward J. & Bessie Zeitlin  
10295 Collins Avenue  
Apt. #607  
Bal Harbour, FL 33154

Dear Mr. & Mrs. Zeitlin:

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  
Alex Hollender  
Tanklow & Hollender  
450 Seventh Ave.  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|   |   |          |
|---|---|----------|
| In the Matter of the Petition           | : |          |
| of                                      | : |          |
| EDWARD J. ZEITLIN and BESSIE ZEITLIN    | : | DECISION |
| for Redetermination of a Deficiency or  | : |          |
| for Refund of Personal Income Tax under | : |          |
| Article 22 of the Tax Law for the Years | : |          |
| 1971, 1972, 1973 and 1974.              | : |          |

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Petitioners, Edward J. Zeitlin and Bessie Zeitlin, 10295 Collins Avenue, Apt. 607, Bal Harbour, Florida 33154, 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 1971, 1972, 1973 and 1974 (File No. 13670).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 26, 1979 at 10:45 A.M. Petitioners appeared by Alex Hollender, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Schwadron, Esq., of counsel).

ISSUE

Whether interest income received by a nonresident from purchase money mortgages is taxable to New York State.

FINDINGS OF FACT

1. Petitioners, Edward J. Zeitlin and Bessie Zeitlin, timely filed a New York State combined personal income tax resident return for the year 1971. On March 18, 1975, the Income Tax Bureau received an "amended" New York State combined personal income tax resident return for the period January 1, 1971 to November 21, 1971, and an "amended" New York State combined personal income

tax nonresident return for the period November 22, 1971 to December 31, 1971. These amended returns resulted from petitioners' change of residence on November 22, 1971 to the State of Florida.

2. Petitioners, Edward J. Zeitlin and Bessie Zeitlin, timely filed a New York State combined personal income tax nonresident return for the year 1972.

3. Petitioner Bessie Zeitlin timely filed separate New York State personal income tax nonresident returns for the years 1973 and 1974.

4. On January 8, 1975, the Income Tax Bureau validated a signed consent to extend the period of limitation for the year 1971 to April 15, 1976 in accordance with section 683(c)(2) of the Tax Law.

5. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$8,191.65, less an overpayment of \$2,353.16, resulting in a net amount due of \$5,838.49. On February 6, 1976, the Income Tax Bureau abated \$582.42 in interest, which resulted in a net amount due of \$5,256.07. The aforementioned deficiency was attached to a Statement of Audit Changes which explained the Bureau's findings and recomputations as follows:

"Interest income from the installment sale by the Morris Wolsk Estate and interest income from the installment sale of 4816-13th Ave. is subject to tax in the nonresident status since the installment sale involved the sale of the rental of New York real property."

"Since the installment gain receivable from the sale of 4816-13th Ave. was accrued on the final resident return, a modification under section 654 is required in 1972, 1973, and 1974."

"For the year 1972, the capital gain modification was not included on line 2 of the Form IT-203."

In addition for the year 1972, since Bessie's items of tax preference exceed the specific deduction, she is subject to the minimum income tax."

"Based on available information, the modification for allocable expenses and the minimum income tax is adjusted for the years 1971, 1972, 1973, and 1974."

"The B/A formula is corrected for the year 1971."

"The limitation percentage for year 1973 is corrected to 49.3% and for the year 1974 to 48.8626%."

The sole issue raised by petitioners was the taxability of interest income from a mortgage owned by a nonresident taxpayer.

6. Petitioner Bessie Zeitlin owned a three story building, consisting of three rental units, a store and two apartments. The property was owned by petitioner Bessie Zeitlin since June, 1935, and was located at 4816-13th Avenue, Brooklyn, New York. In 1970, the property was sold and she granted a purchase money mortgage to the buyer. The gain from the sale of this property was accrued on the "amended" resident return filed for period January 1, 1971 to November 21, 1971. Also reported was interest income received from the mortgage during that period. However, interest income was not reported on petitioners' nonresident returns for the remaining period in 1971 and for subsequent years at issue.

7. Petitioner Bessie Zeitlin received interest income from the Estate of Morris Wolsk ("The Estate") during the years at issue. This interest income was derived from purchase money mortgages, held by the estate, of real property located in the City and State of New York. This interest income was reported during the resident period of the "amended" resident return and excluded during the nonresident periods of the "amended" and subsequent nonresident returns.

8. Petitioner Bessie Zeitlin was a housewife and was not engaged in the business of holding property primarily for sale to customers.

9. The estate resulted from the demise of Morris Wolsk, father of petitioner Bessie Zeitlin. Petitioner's father and the subsequent estate was not engaged in the business of holding property primarily for sale to customers.

10. The interest income at issue was received by petitioner Bessie Zeitlin during the nonresident periods as follows:

INTEREST INCOME FROM MORTGAGE LOANS

| <u>Year</u> | <u>Purchase<br/>Money<br/>Mortgage</u> | <u>The Estate</u> | <u>Total</u> |
|-------------|--|-------------------|--------------|
| 1971        | \$ 400.44                              | \$ --             | \$ 400.44    |
| 1972        | 3,548.64                               | 10,245.05         | 13,793.69    |
| 1973        | 3,456.76                               | 16,598.00         | 20,054.76    |
| 1974        | 3,367.40                               | 21,310.00         | 24,677.40    |

The amount of interest income received from both sources, as shown above, was accepted by petitioner Bessie Zeitlin and the Audit Division and is not at issue.

CONCLUSIONS OF LAW

A. That interest income on installment obligations arising from the sale of New York State business realty is taxable to a nonresident. Rental property is considered to be business property. When the interest in the properties was sold, a purchase money mortgage was obtained. Before and after the sale, petitioners had an interest in real property in New York State.

B. That section 632(b) (2) of the Tax Law provides that:

"Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this State."

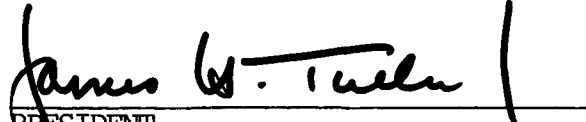
Accordingly, the interest received from the purchase money mortgage on real property which was used in a former rental business within New York State was includable in New York adjusted gross income.

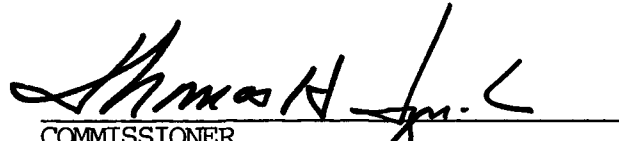
C. That the petition of Edward J. Zeitlin and Bessie Zeitlin is denied and the Notice of Deficiency dated January 26, 1976 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 14 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER