

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
James B. Hurlock & Margaret H. Hurlock :
Donald P. Madden and Sarah D. Madden, and : AFFIDAVIT OF MAILING
Gwynne H. Wales and Janet M. Wales :
:
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 :
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 12th day of November, 1982, he served the within notice of Amended Decision by certified mail upon James B. Hurlock & Margaret H. Hurlock, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

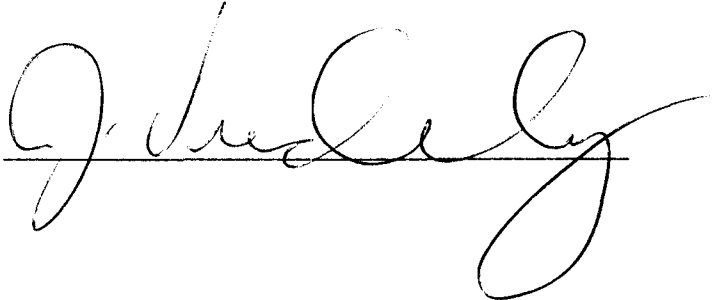
James B. Hurlock & Margaret H. Hurlock
46 Byram Rd.
Greenwich, CT

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
12th day of November, 1982.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

November 12, 1982

James B. Hurlock & Margaret H. Hurlock
46 Byram Rd.
Greenwich, CT

Dear Mr. & Mrs. Hurlock:

Please take notice of the Amended 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
James B. Hurlock & Margaret H. Hurlock
Donald P. Madden and Sarah D. Madden, and : AFFIDAVIT OF MAILING
Gwynne H. Wales and Janet M. Wales :
:
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of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
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 12th day of November, 1982, he served the within notice of Amended Decision by certified mail upon Gwynne H. Wales & Janet M. Wales, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

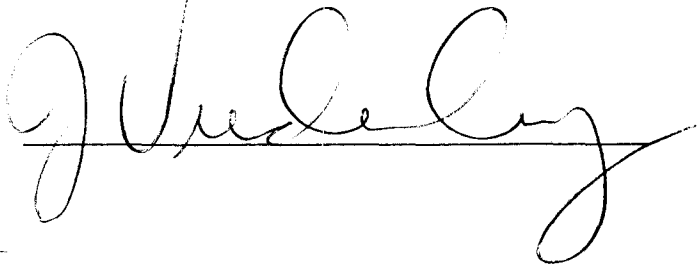
Gwynne H. Wales & Janet M. Wales
29 Oakwood Lane
Greenwich, CT 06830

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
12th day of November, 1982.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

November 12, 1982

Gwynne H. Wales & Janet M. Wales
29 Oakwood Lane
Greenwich, CT 06830

Dear Mr. & Mrs. Wales:

Please take notice of the Amended 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.

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Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
James B. Hurlock & Margaret H. Hurlock
Donald P. Madden and Sarah D. Madden, and : AFFIDAVIT OF MAILING
Gwynne H. Wales and Janet M. Wales :
:
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 :
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State of New York
County of Albany

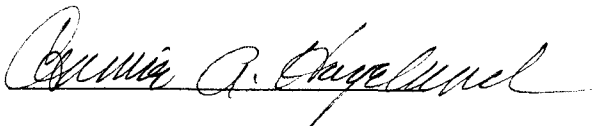
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of November, 1982, he served the within notice of Amended Decision by certified mail upon Donald P. Madden & Sarah D. Madden, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald P. Madden & Sarah D. Madden
261 Lake Avenue
Greenwich, CT

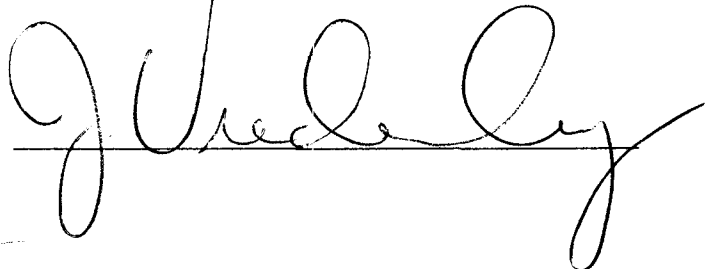
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
12th day of November, 1982.



Officer



Jay Vredenburg

NOTARIAL PUBLIC
STATE OF NEW YORK
SECTION 170

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
James B. Hurlock & Margaret H. Hurlock :
Donald P. Madden and Sarah D. Madden, and : AFFIDAVIT OF MAILING
Gwynne H. Wales and Janet M. Wales :
:
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 :
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State of New York
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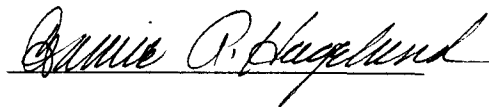
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of November, 1982, he served the within notice of Amended Decision by certified mail upon David Sachs the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

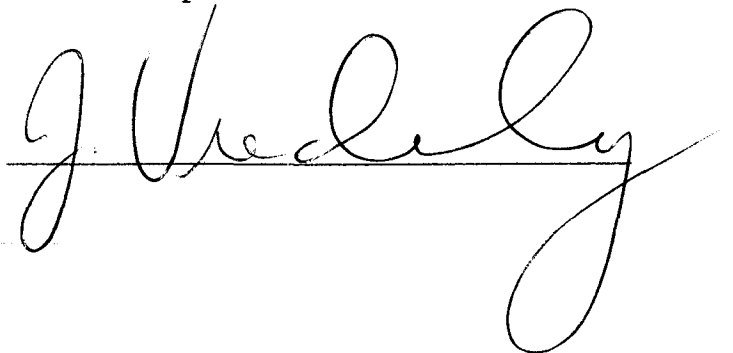
David Sachs
14 Wall St.
New York, NY 10005

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 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
12th day of November, 1982.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

November 12, 1982

Donald P. Madden & Sarah D. Madden
261 Lake Avenue
Greenwich, CT

Dear Mr. & Mrs. Madden:

Please take notice of the Amended 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
David Sachs
14 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
JAMES B. HURLOCK and MARGARET H. HURLOCK,	:	AMENDED
DONALD P. MADDEN and SARAH D. MADDEN, and	:	DECISION
GWYNNE H. WALES and JANET M. WALES	:	
for Redetermination of Deficiencies or for	:	
refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

Petitioners James B. Hurlock and Margaret H. Hurlock, 46 Byram Road, Greenwich, Connecticut, Donald P. Madden and Sarah D. Madden, 261 Lake Avenue, Greenwich, Connecticut 06830, and Gwynne H. Wales and Janet M. Wales, 29 Oakwood Lane, Greenwich, Connecticut 06830, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File Nos. 13991, 13998 and 14077).

A formal hearing was held before Frank Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 2, 1978 and concluded on September 26, 1978. Petitioners appeared by White & Case, Esqs. (David Sachs, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Barry M. Bresler and Bruce A. Zalaman Esqs., of counsel).

ISSUES

I. Whether petitioners' guaranteed salaries, foreign living allowances and use of automobiles, are properly included in computing their distributive shares of the partnership net income.

II. Whether petitioners' income subject to New York State tax, is determined by applying the partnership allocation percentage to their total income from

the partnership, but not in excess of the amount of income petitioners reported for Federal income tax purposes after deducting the exclusion permitted by section 911 of the Internal Revenue Code.

III. Whether the Audit Division's interpretation of section 637 of the Tax Law results in a denial of due process of law in violation of the Constitution of the United States.

FINDINGS OF FACT

1. On January 26, 1976, as a result of an audit of the law partnership of White & Case, the Audit Division issued statements of audit changes against James B. Hurlock and Margaret H. Hurlock his wife, Donald P. Madden and Sarah D. Madden, his wife and Gwynne H. Wales and Janet M. Wales, his wife, imposing additional income taxes for the year 1972. The allocated New York distributive share of the partnership income was adjusted on the grounds that the distributive share of partnership income includible in New York adjusted gross income of a nonresident member of a partnership doing business within and without the State, who qualifies for exclusion of income earned abroad under Section 911 of the Internal Revenue Code, cannot exceed his distributive share from such partnership includible in Federal gross income. Accordingly, on January 26, 1976, partnership income was increased and notices of deficiency were issued against James B. Hurlock and Margaret H. Hurlock in the amount of \$1,140.88 plus interest, against Donald P. Madden and Sarah D. Madden in the amount of \$1,472.22 plus interest and against Gwynne H. Wales and Janet M. Wales in the amount of \$1,177.15 plus interest.

2. The following stipulation as to the facts was agreed to by petitioners and the Audit Division. References to numbers and cities identified each petitioner and were used consistently ([1]: Madden; [2]: Hurlock; [3]: Wales):

(a) The respective petitioners are husband and wife. They are now, and during the taxable year in issue (1972) they were, citizens of the United States. During 1972 they resided abroad in Paris [1], London [2] and Brussels [3], respectively. Petitioners were during 1972 bona fide residents of the respective foreign cities within the meaning of section 911(a)(1) of the Internal Revenue Code of 1954, as then in effect (the "Code"), and were nonresidents of the State of New York.

(b) Petitioners filed joint federal and New York income tax returns for 1972. These returns were prepared in accordance with the cash receipts and disbursements method of accounting.

(c) The wives are petitioners herein solely because they filed joint New York income tax returns with petitioner husbands, who are hereinafter referred to as "petitioners."

(d) The petitioners are members of the law firm of White & Case (the "firm") a partnership formed under the laws of the State of New York. The firm is engaged solely in the general practice of law, with its principal offices in New York City, New York. During 1972, there were approximately 60 partners. Capital was not a material income-producing factor in the firm's business. The firm was on a calendar year fiscal period for tax purposes and utilized the cash receipts and disbursements method of accounting for such purposes.

(e) In 1972, the firm had branch offices in Paris, France [1]; London, England [2] and Brussels, Belgium [3]. During that year, each branch had one managing partner and one or more associate lawyers. Petitioners were during 1972 the managing partners of the respective branches. Of the firm's net income for 1972, 94.417 percent was from sources within New York.

(f) The firm paid to each petitioner in 1972 an amount of \$25,000.00 pursuant to letter agreements marked as Joint Exhibits 2[3] and 3[1] and Petitioner's Exhibit 2[2], and a foreign living allowance of \$7,000.00 [1], \$5,000.00 [2], and \$5,000.00 [3], respectively. Also petitioners [1] and [2] were furnished with the use of an automobile, the fair market value of which was \$400.00 [1] and \$726.00 [2], respectively. Such amounts were not determined by reference to petitioners' percentage interests in the firm. None of such amounts was paid to partners working at the New York offices of the firm. The characterization of such amounts for New York income tax purposes is not stipulated.

(g) In addition to the amounts set forth in the preceding paragraph, each petitioner was entitled to a distributive share of firm income.

(h) For federal income tax purposes, petitioners properly excluded \$20,000.00 [1], \$25,000.00 [2] and \$22,500.00 [3], respectively, of the amounts set forth in paragraph "f", as constituting earned income from sources without the United States, pursuant to the provisions of section 911 of the Code. For federal income tax purposes, such amounts constituted guaranteed payments to a partner within the meaning of section 707(c) of the Code, and not part of petitioner's distributive shares of the firm's income.

(i) For New York income tax purposes in 1972 petitioners excluded from income taxable in New York all the amounts set forth in paragraph "f" on the ground that they constituted income from sources without New York. In addition, petitioners excluded a fraction of the balance of their income from the firm equivalent to the percentage of the firm's net income from sources without New York. Such percentage, as corrected, is 5.583 percent.

(j) The Income Tax Bureau asserts that each petitioner should include in income for 1972 subject to New York income tax 94.417 percent of his aggregate income from the firm, but not in excess of the portion of such income includable in gross income for federal income tax purposes after deducting the exclusion permitted by section 911 of the Code.

3. On June 29, 1978, the Audit Division asserted greater deficiencies than those which were originally stated against petitioners as follows: James and Margaret Hurlock in the amount of \$1,249.89 plus interest; Gwynne and Janet Wales in the amount of \$1,563.28 and Donald and Sarah Madden in the amount of \$1,989.83. The greater deficiencies were based on partnership distributions computed as follows:

	<u>Madden</u>	<u>Hurlock</u>	<u>Wales</u>
Guaranteed Salary	\$25,000.00	\$25,000.00	\$25,000.00
Living Allowance	7,000.00	5,000.00	5,000.00
Automobile Allowance	400.00	726.00	-0-
Distributive Share of Partnership Net Income	<u>40,201.00</u>	<u>55,946.00</u>	<u>40,201.00</u>
Total Partnership Distribution	<u>\$72,601.00</u>	<u>\$86,672.00</u>	<u>\$70,201.00</u>
Less: IRC Section 911 Exclusion	<u>20,000.00</u>	<u>25,000.00</u>	<u>22,500.00</u>
Partnership Distributions After Exclusion	\$52,601.00	\$61,672.00	\$47,701.00

4. The partnership's books and records for 1972 indicated total partnership payments to Donald P. Madden of \$72,201.00, to James B. Hurlock of \$85,946.00 and to Gwynne H. Wales of \$70,201.00. On Federal Form 2555 Exemption of Income Earned Abroad, Mr. Madden and Mr. Hurlock reported as noncash remuneration, the use of automobiles in the amounts of \$400.00 and \$726.00 respectively.

CONCLUSIONS OF LAW

A. That section 637(a)(1) of the Tax Law provides:

"In determining New York adjusted gross income of a non-resident partner of any partnership, there shall be included only the portion derived from or connected with New York sources of such partner's distributive share of items of partnership income, gain, loss and deductions entering into his federal adjusted gross income..."

The partnership books and records for 1972 show total partnership distributions as indicated in Finding of Fact "4" supra.

B. That gross income includes income realized in any form, whether in money, property, or services (Treas. Reg. §1.61.1). The noncash remuneration for use of car is gross income and includible as a partnership distribution.

C. That the Audit Division is directed to recompute petitioners' distributive shares of partnership income from New York sources by applying the partnership allocation percentage to petitioners' total partnership distribution after deduction for Internal Revenue Code section 911 exclusion (see Finding of Fact "3", supra) entering into their federal adjusted gross income (see Webster v. Tully 56 N.Y.2d 532).

D. That the constitutionality of the laws of the State of New York are presumed at the administrative level. There is no jurisdiction at the administrative level to declare such laws unconstitutional.

E. That the petitions of James B. Hurlock and Margaret H. Hurlock, Donald P. Madden and Sarah D. Madden, and Gwynne H. Wales and Jane M. Wales are granted to the extent indicated in Conclusion of Law "C", supra; and, are in all other respects denied.

DATED: Albany, New York

NOV 12 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER