

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Aaron Greenberg

:

:

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 1978 & 1979. :

State of New York
County of Albany

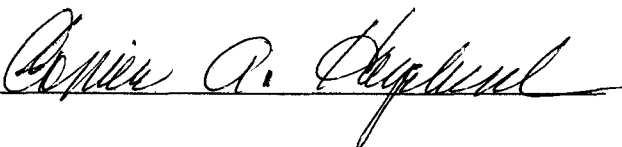
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Aaron Greenberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Aaron Greenberg
2 Lakeview Dr.
Lake Success, NY 11020

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
15th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
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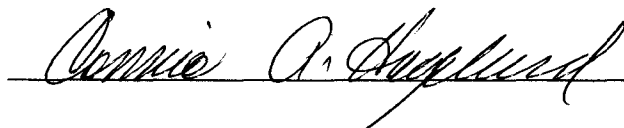
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Jerome D. Lebowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerome D. Lebowitz
501 Fifth 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
15th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 15, 1983

Aaron Greenberg
2 Lakeview Dr.
Lake Success, NY 11020

Dear Mr. Greenberg:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jerome D. Lebowitz
501 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AARON GREENBERG	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1978 and 1979.	:	

Petitioner, Aaron Greenberg, 2 Lakeview Drive, Lake Success, New York 11020, 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 1978 and 1979 (File No. 34198).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1982 at 9:15 A.M. Petitioner appeared with Jerome D. LeBowitz, Esq. The Audit Division appeared by Paul B. Coburn (Alfred Rubenstein, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a resident tax credit for income taxes paid to the State of Rhode Island on income derived from a subchapter S corporation situated in said state.

FINDINGS OF FACT

1. Aaron Greenberg (hereinafter petitioner) filed combined New York State income tax resident returns with his wife, Shirley Greenberg, for the years 1978 and 1979. On each return petitioner reported income from Nomo Products, Inc., a subchapter S corporation domiciled in the State of Rhode Island.

2. On November 20, 1980 petitioner filed a New York State Claim for Resident Tax Credit, form IT-112R, for each of the years 1978 and 1979. On such forms petitioner claimed a resident tax credit of \$1,662.60 for 1978 and \$1,118.53 for 1979, for income taxes paid to the State of Rhode Island on his undistributed income derived from the aforementioned subchapter S corporation. The credit claimed for 1978 was greater than the tax paid to Rhode Island of \$1,622.60. The credit claimed for 1979 was equal to the Rhode Island tax.

3. Pursuant to the hearing record, the Audit Division did not notify petitioner in writing that his claims for credit have been denied.

4. Petitioner contended that he is properly entitled to the claimed resident tax credits at issue since "Rhode Island tax law states that a nondomicile of that state deriving income from a Sub-Chapter "S" Corporation domiciled in Rhode Island, is subject to Rhode Island income tax under Rhode Island General Laws Section 44-11-2." and that "under "full faith and credit", the Rhode Island interpretation should govern. To hold otherwise would subject petitioner's income to a total federal and state tax of 100% which is confiscatory and certainly a violation of due process under the federal and state constitution."

5. The Audit Division maintained that the resident tax credits at issue are not properly allowable since petitioner's subchapter S income is considered to be from an intangible. Petitioner argued that under Rhode Island law such income is not considered as being from an intangible, but rather from the conduct and operation of business.

CONCLUSIONS OF LAW

A. That with respect to rendering a decision on the issue herein, the laws of the State of Rhode Island are irrelevant.

B. That although petitioner was not given notice in writing that his claims have been denied, the petition in this matter has nevertheless been properly filed and accordingly must be acted upon since more than six months have expired since the claims were filed. (section 689(c)(3) of the Tax Law).

C. That Internal Revenue Code section 1373(b) provides that:

"Each person who is a shareholder of an electing small business corporation (subchapter S corporation) on the last day of a taxable year of such corporation shall include in his gross income, for his taxable year in which or with which the taxable year of the corporation ends, the amount he would have received as a dividend, if on such last day there had been distributed pro rata to its shareholders by such corporation an amount equal to the corporation's undistributed taxable income for the corporation's taxable year. For purposes of this chapter, the amount so included shall be treated as an amount distributed as a dividend on the last day of the taxable year of the corporation."

D. That 20 NYCRR 121.1 provides that:

"Where a resident individual receives income derived from sources within another state of the United States, a political subdivision of another state or the District of Columbia, he is entitled to a credit against his New York tax for any income tax imposed on such income by the other jurisdiction. This credit is allowable only for the portion of the other tax applicable to income derived from sources within the other taxing jurisdiction."

E. That 20 NYCRR 121.3(d) provides that:

"The term 'income derived from sources within' another state or the District of Columbia is construed so as to accord with the definition of the term 'derived from or connected with New York sources' set forth in Part 131 in relation to the adjusted gross income of a nonresident individual. Thus, the resident credit is allowable for income tax imposed by another jurisdiction upon compensation for personal services performed in the other jurisdiction, income from a business, trade or profession carried on in the other jurisdiction and income from real or tangible personal property situated in the other jurisdiction. On the other hand, the resident credit is not allowed for tax imposed by another jurisdiction upon income from intangibles, except where such income is from property employed in a business, trade or profession carried on in the other jurisdiction."

F. That Part 131, 20 NYCRR 131.7 provides that:

"For a nonresident individual who is a shareholder of a corporation which is an electing small business corporation for Federal income tax purposes

(a) undistributed taxable income of such corporation shall not constitute income or gain derived from New York sources;..."

G. That since under part (131) the undistributed taxable income of a subchapter S corporation does not constitute income derived from New York sources, a resident credit is not allowable for income tax imposed by another jurisdiction upon said income in accordance with 20 NYCRR 121.3(d). Accordingly, no resident tax credits are allowed to petitioner for the taxes paid to Rhode Island on income derived from a subchapter S corporation situated in said State.

H. That the laws of New York are presumed to be constitutionally valid at the administrative level of the New York State Tax Commission.

I. That the petition of Aaron Greenberg is denied and accordingly, the claims for resident tax credit filed November 20, 1980 are denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983


PRESIDENT


COMMISSIONER


COMMISSIONER