

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William & Blanche Katz :
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 :
1972 - 1975. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

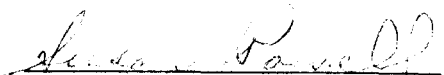
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon William & Blanche Katz, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William & Blanche Katz
800 S. Hollywood Dr.
Pembroke Pines, FL 33025

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
28th day of September, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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 of :
 William & Blanche Katz :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon David Levene the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Levene
Levene, Gouldin & Thompson
902 Press Building
Binghamton, NY 13902

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
28th day of September, 1983.

Lucan Powell

Connie M. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

September 28, 1983

William & Blanche Katz
800 S. Hollywood Dr.
Pembroke Pines, FL 33025

Dear Mr. & Mrs. Katz:

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
David Levene
Levene, Gouldin & Thompson
902 Press Building
Binghamton, NY 13902
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
WILLIAM KATZ and BLANCHE KATZ	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972, 1973, 1974 and 1975.	:	

Petitioners, William Katz and Blanche Katz, 800 South Hollywood Drive, Apt. 107, Pembroke Pines, Florida 33025, 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 1972, 1973, 1974 and 1975 (File No. 19084).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Binghamton, New York, on May 9, 1979 at 1:15 P.M. Petitioners appeared by Levene, Gauldin & Thompson (David Levene, of counsel). The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioners were required to accrue on their final 1971 resident return all remaining capital gains flowing from the installment sale of real property located in this State.

II. Whether interest received as the result of said installment sale is taxable to petitioners as nonresidents of the State.

FINDINGS OF FACT

1. On March 28, 1977, the Audit Division issued a Statement of Audit Changes against William Katz and Blanche Katz on the grounds that since they

had not complied with section 654(c)(4) of the Tax Law, installment gain received was accrued on the final resident return. Since the installment gain was accrued on the final resident return, a modification reducing Federal adjusted gross income was allowable in the amount of the gain reported in 1973, 1974 and 1975. Accordingly, a Notice of Deficiency was issued in the amount of \$27,106.20, plus interest of \$7,739.09, for a total of \$34,845.29.

2. A consent fixing period of limitation upon assessment of personal income and unincorporated business taxes to April 15, 1977 was executed by petitioners.

3. Petitioners timely filed a 1971 New York State combined income tax resident return. For 1972, 1973, 1974 and 1975 they filed New York State nonresident returns and paid the tax due for each year in accordance with their returns. There is no issue with itemized deductions, capital gains, exemptions and maximum standard deductions on the returns as filed.

4. Petitioners had formed partnerships with others and owned two parcels of real property. This property was leased to corporate automobile dealerships. On September 1, 1971, the properties were sold and the partnerships terminated. The partnerships filed federal partnership returns for 1971. Their principal business activity was rental of real estate. The sale of the properties was by installment. In 1972 petitioners became nonresidents. They refused to use the type of agreement (Form IT-260.1) used for filing of securities pursuant to section 654(c)(4) of the Tax Law, because of the controversy surrounding the taxability of the interest income of the installment sale to nonresidents. If it was determined that petitioners failed to include any item of income or gain in their personal income tax for any taxable year, the full amount of tax would be due and their securities could be sold or otherwise disposed of.

5. The following stipulation was entered into by the petitioners and counsel for the Audit Division:

"(1) That the execution by taxpayers of agreement, form IT-260.1, is and will be executed by the taxpayers upon the following understandings: (a) That paragraph one of the agreement, form IT-260.1, is intended to mean that we will include in our New York personal income tax returns in subsequent taxable years (or periods) all income and gains accruable under Section 654(c)(4) of the Tax Law as if we had not changed our resident status and will pay the tax thereon when due; (b) that the first sentence of paragraph two of the agreement is intended to mean that if the State Tax Commission determines that we have failed to include in our New York personal income tax return for any taxable year (or period) any item of income or gain which is required to be included therein under the interpretation of paragraph one (above set forth) or to pay any tax required to be paid thereon, under the terms of this agreement, the full amount of tax which would have been due, if the election under Section 654(c)(4) of the Tax Law had not been made, shall become due immediately;

(2) that interest income from the installment sale is not accruable and therefore will not be considered in the aforementioned agreement, IT-260.1;

(3) that the taxpayers shall not in any way be precluded from contending that interest income from the installment sales involved are not subject to non-resident tax and contesting the inclusion of such interest as part of their income; and the State shall not in any way be precluded from contending that interest income from the installment sales involved are subject to non-resident tax;

(4) the taxpayers shall not in any way be precluded from contesting the method of computation of the New York personal income taxes made by the New York State Tax Commission with respect to the years 1972, 1973, 1974 and 1975."

CONCLUSIONS OF LAW

A. That in order to avoid the accruals mandated by section 654(c)(1) of the Tax Law and 20 NYCRR 148.10, one must comply with the requirements of said sections. Petitioners did not meet said requirements since they failed at any time to file a security bond or other security satisfactory to the State Tax Commission; therefore, the taxable gain is fully accruable to the year of the change in residence, 1972.

B. That in accordance with the stipulation entered into in Finding of Fact "5", supra, by which the Commission considers itself bound (see Servomation Corp. v. State Tax Commission, 60 A.D.2d 374 and Matter of American Telephone and Telegraph Company, S.T.C. dated November 13, 1981), petitioners are entitled to said agreement.¹

C. 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. Petitioners owned an interest in the rental real property owned by the partnership. When petitioners sold that interest, they took back a determinate right to receive installment payments. Before and after the sale, petitioners had an interest in real property in New York State. The ownership of any interest in real or tangible personal property connected with New York sources is an item of income, within the meaning and intent of section 632(b)(1)(A) of the Tax Law and 20 NYCRR 131.3.

D. That the petition of William Katz and Blanche Katz is granted to the extent indicated in Conclusion of Law "B". The Audit Division is accordingly directed to modify the Notice of Deficiency issued on March 28, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

¹ Since section 654(c)(4) of the Tax Law requires the filing of a bond in such situations, holding of Conclusion of Law "B" is confined to the instant case and may not be applied in future audits or Commission decisions.