

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jacob & Lucille Friedland :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1974 - 1976. :
_____:

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of March, 1984, he served the within notice of Decision by certified mail upon Jacob & Lucille Friedland, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jacob & Lucille Friedland
11289 Piping Rock Dr.
Boynton Beach, FL 33429

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
21st day of March, 1984.





Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition
of
Jacob & Lucille Friedland
for Redetermination of a Deficiency or Revision
of a Determination or Refund of Personal Income
Tax under Article 22 of the Tax Law for the Years
1974 - 1976.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of March, 1984, he served the within notice of Decision by certified mail upon Stephen Solomon, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen Solomon
Hutton & Solomon
342 Madison Ave.
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
21st day of March, 1984.

David Paruchuk

Conne A. Hyslop
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 21, 1984

Jacob & Lucille Friedland
11289 Piping Rock Dr.
Boynton Beach, FL 33429

Dear Mr. & Mrs. Friedland:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Stephen Solomon
Hutton & Solomon
342 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
JACOB FRIEDLAND AND LUCILLE FRIEDLAND	:	DECISION
	:	
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974, 1975 and	:	
1976.	:	

Petitioners, Jacob Friedland and Lucille Friedland, 11289 Piping Rock Drive, Boynton Beach, Florida 33429, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1974, 1975 and 1976 (File Nos. 23409 and 23410).

Petitioners, on May 18, 1982, waived their right to a small claims hearing and requested that a decision be rendered based on the entire record contained in their file. All briefs were to be filed on or before October 13, 1983. After due consideration of the entire record the State Tax Commission hereby renders the following decision.

ISSUE

Whether interest income received by petitioners from notes secured by mortgages on New York real property constitutes income derived from New York sources taxable to nonresidents of New York.

FINDINGS OF FACT

1. Petitioners, Jacob Friedland and Lucille Friedland, timely filed separate New York State nonresident income tax returns for the years 1974, 1975 and 1976. In the Federal amount column on their returns petitioners reported total interest income of \$28,755.00 for 1974, \$31,544.00 for 1975 and \$24,088.00

for 1976. None of the interest income was reported by either petitioner as being derived from New York sources.

2. On March 24, 1978 the Audit Division issued two (2) notices of deficiency to petitioner Jacob Friedland. One Notice was for the year 1974 and assessed tax due of \$1,956.43, plus interest; while the other Notice was for the years 1975 and 1976 and assessed tax due of \$2,599.97, plus interest.

The Audit Division also issued two (2) notices of deficiency to petitioner Lucille Friedland on March 24, 1978. One Notice was for the year 1974 and assessed tax due of \$1,995.23, plus interest; while the other Notice was for the years 1975 and 1976 and assessed tax due of \$2,600.10, plus interest.

3. All four (4) of the aforementioned notices of deficiency were premised on explanatory statements of audit changes wherein the Audit Division proposed, among other things, to increase each petitioner's reported New York income by the sum of \$11,863.66 for 1974, \$12,995.96 for 1975 and \$9,858.23 for 1976. The aforementioned proposed increases to each petitioner's reported New York income were explained by the Audit Division via the following statement:

"Since the installment sales are related to property having situs within New York State, the interest collected is likewise taxable by New York State."

Petitioners do not contest other adjustments proposed in the statements of audit changes and, therefore, said other adjustments will not be addressed hereinafter.

4. During the years at issue petitioners received interest income from notes which were secured by mortgages on real property located in New York State. The notes were received by petitioners as the result of their installment sale of four (4) parcels of real property. The following chart identifies the properties sold and the amount of interest income generated from each sale:

<u>Property Sold</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
157 Howard Avenue Staten Island, NY	\$ 7,054.23	\$ 5,899.50	\$ 4,239.70
810 Manor Road Staten Island, NY	7,364.98	1,350.00	-
874-884 Manor Road and 11 Holden Blvd. Staten Island, NY	8,881.80	16,214.91	13,414.59
146 Highland Avenue Staten Island, NY	<u>426.30</u>	<u>2,527.50</u>	<u>2,062.16</u>
Totals	<u>\$23,727.31</u>	<u>\$25,991.91</u>	<u>\$19,716.45</u>

5. The property located at 157 Howard Avenue, Staten Island, New York was sold in 1972 and represented the sale of petitioners' personal residence. Also sold in 1972 was unimproved land located at 810 Manor Road, Staten Island, New York. The property located at 874-884 Manor Road and 11 Holden Blvd., Staten Island, New York was a shopping center which was sold on April 29, 1974. The 146 Highland Avenue, Staten Island, New York property was a two (2) family house sold by petitioners on October 16, 1974. Petitioners did not have any ownership interest in the aforementioned properties during the years at issue.

6. The four (4) properties in question were jointly owned by petitioner Jacob Friedland and petitioner Lucille Friedland and, for this reason, the Audit Division attributed one-half of the interest income to each of the petitioners herein.

CONCLUSIONS OF LAW

A. 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."

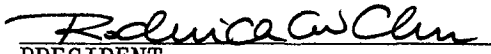
B. That the interest income in question was attributable to the mortgage notes held by petitioners. That said notes represent intangible personal property not employed by petitioners in a business, trade, profession or occupation carried on in New York. Accordingly, the interest income in question is not subject to New York State personal income tax within the meaning of section 632(b)(2) of the Tax Law. Epstein v. State Tax Comm., 89 A.D. 2d 256; Delmhorst v. State Tax Comm., 92 A.D. 2d 981, aff'd _____ N.Y. 2d _____ (affirmed without opinion on 9/1/83).

C. That the petitions of Jacob Friedland and Lucille Friedland are granted to the extent indicated in Conclusions of Law "B", supra; that the Audit Division is directed to recompute the four (4) notices of deficiency dated March 24, 1978 consistent with the conclusion rendered herein; and that the notices of deficiency, as modified, are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 21 1984


PRESIDENT


COMMISSIONER


COMMISSIONER