

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Fred M. Sigman : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York :
City Personal Income Tax under Chapter 46, :
Title T of the Administrative Code of the City :
of New York for the Years 1979, 1980 & 1981. :
:

State of New York :

ss.:

County of Albany :

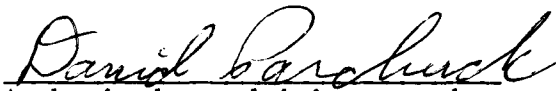
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of April, 1987, he/she served the within notice of Decision by certified mail upon Estate of Fred M. Sigman the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

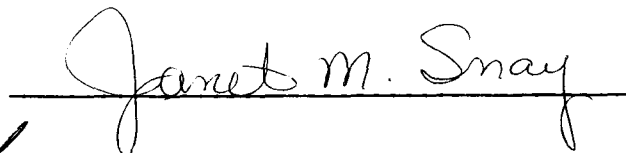
Estate of Fred M. Sigman
c/o Butler, Jablow & Geller
400 Madison Avenue
New York, NY 10017

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of April, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

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of :
Estate of Fred M. Sigman : AFFIDAVIT OF MAILING

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:

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of April, 1987, he served the within notice of Decision by certified mail upon Stanley Geller, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

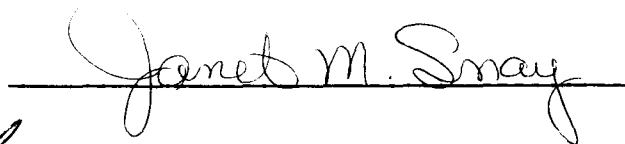
Stanley Geller
Butler, Jablow & Geller
400 Madison Ave.
New York, NY 10017

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
17th day of April, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

April 17, 1987

Estate of Fred M. Sigman
c/o Butler, Jablow & Geller
400 Madison Avenue
New York, NY 10017

To the Executor:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Stanley Geller
Butler, Jablow & Geller
400 Madison Ave.
New York, NY 10017

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ESTATE OF FRED M. SIGMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Years 1979, 1980 and 1981.	:	

Petitioner, Estate of Fred M. Sigman, c/o Butler, Jablow & Geller, 400 Madison Avenue, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1979, 1980 and 1981 (File No. 55915).

A 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 July 16, 1986 at 2:45 P.M., with all briefs to be submitted by July 31, 1986. Petitioner appeared by Stanley Geller, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether Fred M. Sigman was a resident individual of the State and City of New York during the years 1979, 1980 and 1981.

II. Whether a resident tax credit is properly allowable for capital gains and dividend taxes paid to the State of Connecticut for taxable years 1979, 1980 and 1981.

FINDINGS OF FACT

1. Fred M. Sigman (hereinafter "the decedent") filed a New York State Income Tax Nonresident Return (with City of New York Nonresident Earnings Tax) for each of the years 1979, 1980 and 1981. On each return he allocated his salary income on Schedule A-1 to sources within and without the State of New York. According to such schedules, the number of days he worked within New York State during said years was 200, 192 and 192, respectively. The income which the decedent allocated each year was derived from Merrill Lynch, Pierce, Fenner & Smith, Inc., 1 Liberty Plaza - 165 Broadway, New York, New York 10080. Such income, of \$114,236.00 (1979), \$143,131.00 (1980) and \$142,117.00 (1981) was earned by the decedent as a stockbroker for said employer.

2. For New York City purposes, the decedent allocated his 1979 and 1981 salary income on the same basis as that used for New York State purposes. For taxable year 1980, he allocated salary income of \$127,351.00 for New York City purposes rather than his salary as reported on his 1980 Wage and Tax Statement of \$143,131.00. Review of the record shows that the decedent apparently arrived at the amount of \$127,351.00 by reducing the \$143,131.00 by his reported New York adjustment to income of \$15,780.00.

3. On January 20, 1983, the Audit Division issued two (2) statements of personal income tax audit changes to the decedent wherein his entire income reported each year was held fully taxable for New York State and New York City purposes based on the following explanation:

"Since taxpayer maintained a permanent place of abode and spent more than 183 days in New York State, he has been deemed to be a statutory resident of New York."

4. Based on the aforesaid statements, two (2) notices of deficiency were issued against the decedent on April 12, 1983. One notice asserted additional

New York State and City personal income taxes for 1979 and 1980 of \$6,297.24, plus penalty of \$94.44 and interest of \$1,843.48, for a total due of \$8,235.16. The other notice asserted additional New York State and City personal income taxes for 1981 of \$6,952.58, plus penalty of \$104.28 and interest of \$1,135.98, for a total due of \$8,192.84. The record provides no indication of the nature of or basis for the penalties asserted.

5. Fred M. Sigman died on July 30, 1982.

6. During the years at issue, the decedent was domiciled in the State of Connecticut.

7. The Estate of Fred M. Sigman (hereinafter "petitioner") conceded that the days worked by the decedent in New York were correct as reported on the 1979, 1980 and 1981 returns (see Finding of Fact "1", supra). However, petitioner contended that since the decedent worked in New York for only six (6) hours during each day and then returned to his home in Connecticut, such days should not be considered as days spent in New York for purposes of determining residence.

8. During the years at issue, the decedent worked at his employer's office located at Lexington Avenue and 52nd Street, New York City.

9. During the years at issue, the decedent, a single individual, resided on a continuous basis with a close friend. In addition to their home in Connecticut, they maintained a studio apartment in Manhattan, which they used approximately one day per week for the major portion of each year at issue. Said apartment, which was acquired in 1972, was used to entertain friends and to remain overnight on occasions when they went to dinner or the theatre in Manhattan.

10. The decedent and his friend also maintained an apartment in Palm Beach, Florida in which they resided during holiday and vacation periods.

11. Petitioner alleged that if the decedent is deemed to be a resident of New York, he is properly entitled to a resident tax credit for capital gains and dividend taxes paid to Connecticut during the years at issue.

12. According to copies of Connecticut capital gains and dividend tax returns submitted for each year at issue, the decedent paid tax to Connecticut in 1979 in the amount of \$996.00 on dividend income received from Merrill Lynch & Co. In 1980 the decedent paid the same tax in the amount of \$1,147.00, again on dividend income received from Merrill Lynch & Co. In 1981, the decedent paid tax to Connecticut in the amount of \$1,877.00, comprised of \$1,327.00 tax on dividend income from Merrill Lynch & Co. and \$550.00 tax on capital gains from sales of securities.

CONCLUSIONS OF LAW

A. That section 605(a) of the Tax Law provides that a resident individual means an individual:

"(2) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state".

B. That 20 NYCRR 102.2(c) provides, in pertinent part, that:

"In counting the number of days spent within and without this State, presence within the State for any part of a calendar day constitutes a day spent within the State".

C. That the decedent's Manhattan apartment constituted a permanent place of abode maintained by him during the years 1979, 1980 and 1981. Since he spent more than 183 days in New York during each of said years, he was a resident individual of New York State during such years within the meaning and intent of section 605(a)(2) of the Tax Law and 20 NYCRR 102.2(c).

D. That section T46-105.0(a)(2) of the Administrative Code of the City of New York provides a definition for "city resident individual" which is essentially

the same as that provided for "resident individual" under section 605(a)(2) of the Tax Law. Accordingly, the decedent was a city resident individual during each of the years 1979, 1980 and 1981.

E. That section 620(a) of the Tax Law provides that:

"[a] resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States ...upon income both derived therefrom and subject to tax under this article." (Emphasis supplied.)

F. That 20 NYCRR 121.4(d) (formerly 20 NYCRR 121.3[d]) provides in pertinent part as follows:

"[T]he 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. Thus, for example, no resident credit is allowable for an income tax of another jurisdiction on dividend income not derived from property employed in a business, trade or profession carried on in such jurisdiction."

G. That the United States Tax Court in McGowan v. Commissioner (67 T.C. 599, 610) recently stated: "A 'tax' is an 'income tax' even though it is restricted to various forms of income."

H. That although the Connecticut capital gains, dividends and interest tax qualifies as an income tax, a resident tax credit is not allowable in the instant case since the decedent's capital gain and dividend income reported on his Connecticut returns did not meet the qualification set forth in Tax Law § 620(a) and 20 NYCRR 121.4(d) in that such income was not derived from Connecticut. The income was all from intangibles in the form of dividends and gains from securities, none of which was employed in a business carried on in Connecticut.


I. That the penalties asserted are hereby cancelled (see Finding of Fact "4", supra).

J. That the petition of the Estate of Fred M. Sigman is denied and, except as provided in Conclusion of Law "I", supra, the two notices of deficiency issued April 12, 1983 are sustained, together with such interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

APR 17 1987


PRESIDENT


COMMISSIONER


COMMISSIONER