

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Andrew J. Frankel :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Years 1976 & 1977. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Andrew J. Frankel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Andrew J. Frankel  
25 Sherwood Ave.  
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  
29th day of December, 1982.

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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of a Determination or a Refund of NYS & NYC Income :  
Tax under Article 22 & 30 of the Tax Law for the :  
Years 1976 & 1977. :  
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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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Bruce M. Greenwald the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bruce M. Greenwald  
Arthur Young & Co.  
277 Park Ave.  
New York, NY 10172

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  
29th day of December, 1982.

Kathy Pfaffenbach

J. Vredenburg

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

December 29, 1982

Andrew J. Frankel  
25 Sherwood Ave.  
Greenwich, CT 06830

Dear Mr. Frankel:

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, 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  
Bruce M. Greenwald  
Arthur Young & Co.  
277 Park Ave.  
New York, NY 10172  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ANDREW J. FRANKEL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles 22 :	:	
and 30 of the Tax Law and Chapter 46, Title T of	:	
the Administrative Code of the City of New York :	:	
for the Years 1976 and 1977.	:	

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Petitioner, Andrew J. Frankel, 25 Sherwood Avenue, Greenwich, Connecticut 06830, 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 Article 30 of the Tax Law for the year 1976 and 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 year 1977 (File No. 26937).

On December 10, 1981, petitioner advised the State Tax Commission, in writing, that he desired to waive a Formal Hearing and submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether petitioner is entitled to a resident tax credit for taxes paid to the State of Connecticut on dividends received.

FINDINGS OF FACT

1. Petitioner, Andrew J. Frankel, and his wife Anita G. Frankel, filed separate New York State income tax resident returns on combined Form IT-201/208 for years 1976 and 1977. The New York tax return filed for each year showed the address of petitioner as 25 Sherwood Avenue, Greenwich, Connecticut 06830.

2. On March 23, 1979, the Audit Division issued to petitioner, Andrew J. Frankel, a Statement of Audit Changes wherein it disallowed a resident tax credit for years 1976 and 1977 on the ground that "Dividends tax paid to the State of Connecticut does not qualify for resident tax credit...". On April 11, 1979, the Audit Division issued a Notice of Deficiency asserting a net New York State personal income tax due of \$11,164.43, plus interest of \$1,149.19, for a total amount due of \$12,313.62.

3. Petitioner admittedly was a resident individual of New York, and also lived in and was a domiciliary of Connecticut. He filed with the State of Connecticut a Capital Gains and Dividends Tax Return for each year, in which both he and his wife reported their total dividend income. The Schedule of Capital Gains and Losses which was submitted with petitioner's New York return for each year showed a net capital loss which is not deductible on the tax return filed with Connecticut. Said returns showed amounts due for 1976 and 1977 of \$2,713.00 and \$9,493.00 respectively.

4. Petitioner attached to his New York State income tax return for each year, Form IT-112R "Claim for Resident Tax Credit", which is a claim for credit against personal income taxes paid or due to the State of New York by a resident for income taxes paid or due to another state, or political subdivision thereof. In computing the credit allowable on said form for 1976, petitioner erroneously included in total income the dividends and interest income reported by his wife on her separate New York tax return. However, a recomputation of the credit for 1976 indicates that taxes paid to Connecticut of \$2,713.00 were less than the reported credit.

5. Petitioner contends that the dividend tax paid to the State of Connecticut qualifies for the resident tax credit allowed under the provisions of section

620 of the Tax Law and that the intent of said section is to prevent taxation of the same income by more than one taxing jurisdiction.

6. Page two of Form IT-112R (Claim for Resident Credit) clearly states "Do not enter in Column B (the portion taxable in other jurisdiction) any amount of income, gain, loss or deduction arising from dividends or interest or from intangible assets, except to the extent that it is derived from an asset connected with a business carried on in the other jurisdiction".

#### CONCLUSIONS OF LAW

A. That the New York City personal income tax imposed by Article 30 of the Tax law for 1976 and by Chapter 46, Title T of the Administrative Code of the City of New York for 1977 and thereafter is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references, though uncited to the corresponding sections of Article 30 or Chapter 46 Title T.

B. 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 added). The personal income tax regulations state in part that "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. ...[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" [20 NYCRR 121.3(d)].

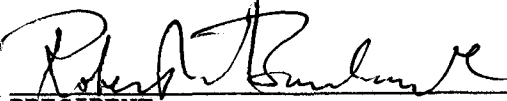
C. That the dividend income received by petitioner, Andrew J. Frankel, was attributable to intangible personal property which was not connected with a business, trade, profession or occupation carried on in the State of Connecticut. Therefore, no credit is allowed under section 620 of the Tax Law for taxes paid to Connecticut on dividends received. [20 NYCRR 121.3(d) see Matter of the Petition of George and Sylvia Backer, State Tax Commission, November 26, 1979].


D. That the petition of Andrew J. Frankel is denied and the Notice of Deficiency issued on April 11, 1979, is sustained together with any additional interest that may be lawfully owing.

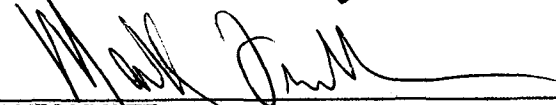
DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

ACTIVE   
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER