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Income Tax Determination
Senzel, Charles + Joann
A-2

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of CHARLES AND JOANN SENZEL For a Redetermination of a Deficiency or a Refund of Personal Income Taxes under Article(s) 22 of the Tax Law for the year(s) 1960	Affidavit of Mailing of Notice of Decision, by Registered Mail

State of New York
County of Albany

LYNN HORODOWICH, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 23 day of July, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon CHARLES AND JOANN SENZEL the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Charles Senzel, Clamshell Lane, Etons Neck, L.I. N.Y.

and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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
23 day of July, 1969.

Lynn Horodowich

Lawrence A. Newman
Hearing Officer

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of CHARLES & JOANN SENZEL For a Redetermination of a Deficiency or a Refund of Personal Income Taxes under Article(s) 22 of the Tax Law for the year(s) 1960	Affidavit of Mailing of Notice of Decision, by Registered Mail

State of New York
County of Albany

LYNN HORODOWICH, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 23 day of July, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Jerome J. Kahan, Esq.
the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerome J. Kahan, Esq., 122 East 42nd Street, New York, New York 10017
and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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
23 day of July, 1969.

Lawrence Newman
Hearing Officer

Lynn Horodowich

To Mr. Rook

Re: Charles and Joann Senzel
Hearing before Mr. Frank DeBellis, 1965
Art. 22 year 1960

Proposed decision recommended for approval.

July 2, 1969

LAN:pw

From Lawrence A. Newman

L 9 (6-65)

BUREAU OF LAW

MEMORANDUM

Income Tax Determinations A-Z
Sengel, Charles and Joann

TO: Commissioners Murphy, Palestin and Macduff

FROM: Frank M. DeBellis

SUBJECT: Charles and Joann Sengel, Petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1960

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on November 24, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue involved is whether taxpayers in arriving at 1960 New York adjusted gross income, are entitled to a modification for subchapter S undistributed taxable income (sections 1371-1377 of the Internal Revenue Code) included in their Federal adjusted gross income.

Taxpayer Charles Sengel, a New York resident, owned 50% of the shares of stock of Store-Craft Inc. during the year 1960. The corporation filed an election with the United States Internal Revenue Service for tax treatment under the provisions of subchapter S of the Internal Revenue Code, which election was effective during the year in question. Under the subchapter S provisions, the shareholders include in their own income for tax purposes the taxable income of the subchapter S corporation, whether distributed or not, in lieu of corporate taxes on such earnings.

In the joint Federal return filed by Charles and Joann Sengel for 1960, there was included in gross income Charles Sengel's share of Store-Craft Inc. undistributed taxable earnings in the sum of $11,455.94. Subsequently, after a Federal audit, Charles Sengel's share of undistributed taxable earnings of the corporation was increased by $3,232.58 to $14,688.52. The amount of the adjustment after Federal audit is not in question.

In the 1960 New York resident return filed by taxpayers, Charles Sengel's share of the corporation's undistributed taxable income ($11,455.94) was deducted from Federal adjusted gross income in arriving at New York adjusted gross income.

On April 13, 1964 the Income Tax Bureau issued a statement of audit changes adding Charles Samzel's share of the undistributed taxable income of Store-Craft Inc., (as computed after Federal audit in the sum of $14,688.52) as taxable income of the taxpayers for the year 1960, and issued a notice of deficiency.

The taxpayers contend that the asserted deficiency constitutes "double taxation" because New York Law does not grant a subchapter S corporation franchise tax exemption (whereas the Federal law allows corporate tax exemption) on the amounts taxed to the individual shareholders. They further contend that it was not the legislature's intention to achieve a result regarded as inequitable by the taxpayers. The question of constitutionality is not explicitly raised by the taxpayers, but may be inherent in their argument. It is noted, however, that the question of constitutionality (under New York Constitution Article XVI, section 3, and Article III section 22) was considered by the Tax Commission in the Petition of Ralph Garlin. (Case [illegible]). It was decided in that case that the omission of a provision in section 612 of the Tax Law for modification of subchapter S income included in a resident's Federal adjusted gross income is not in violation of any of the provisions of the New York State Constitution.

Further, the taxpayers' argument as to legislative oversight fails to consider the specific recognition given to non-resident subchapter S shareholders by the legislature in declaring subchapter S undistributed income to be nontaxable to a non-resident, as not being income or gain derived from New York sources (section 632(4)(A) of the Tax Law).

The taxpayers' contention of "double taxation" fails to consider that the New York Franchise Tax is for "the privilege of doing business in a corporate form in the state of New York," and not an income tax. (People ex rel. Barcalo Mfg. Co. v. [illegible], 187 App. Div. 175 N.Y.S. 337 at page 339; People v. [illegible], [illegible] N.Y. 48; Brady v. State Tax Commission, 176 Misc. 1031, 29 N.Y.S. 2d 88, affirmed 263 App. Div. 955, 33 N.Y.S. 2d 384.) It also fails to consider that to the extent that undistributed subchapter S taxable income is includable in the Federal adjusted gross income of a shareholder when earned by the corporation, it is deemed not a dividend when subsequently distributed (Internal Revenue Code section 1373(2)(d)(1)).

The taxpayers have failed to establish that the Tax Law requires or permits the omission of undistributed subchapter S taxable income from the return of resident New York taxpayers. They have also failed to establish that the failure to provide for such omission is the result of legislative oversight, or that such failure results in unconstitutional taxation.

For the reasons stated above, I recommend that the decision of the Tax Commission in the above matter be substantially in the form submitted herewith.

Senior Attorney

FMB:bdg
December 23, 1965

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF CHARLES AND JOANN SENZEL PETITION FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1960	DECISION

Taxpayers Charles Senzel and Joann Senzel, having duly filed a petition for a redetermination of a deficiency of personal income taxes for the year 1960 (File No. 6649470) and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, before Frank M. DeBellis, Hearing Officer of the Department of Taxation and Finance on November 24, 1965, at which hearing the taxpayer Charles Senzel appeared personally, and at which taxpayers were represented by Jerome J. Kahan, Esq., and testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers at all times relevant herein were and are residents of the State of New York, and that for the taxable year 1960 they filed a joint New York resident income tax return;

(2) That during the taxable year 1960, the taxpayer Charles Senzel owned 50% of the shares of Store-Craft, Inc., a corporation which had elected to be taxed as a small business (subchapter S) corporation for the year 1960, under the provisions of the United States Internal Revenue Code;

(3) That Charles Senzel's share of undistributed taxable income of Store-Craft, Inc. for the year 1960 was $14,688.52;

(4) That such undistributed taxable income was includable in taxpayer's Federal adjusted gross income for the year 1960;

(5) That in computing their 1960 New York adjusted gross income, taxpayers modified Federal adjusted gross income by excluding undistributed taxable income from the subchapter S corporation;

(6) That section 612 of the Tax Law, in part, defines New York adjusted gross income of a resident as "his federal adjusted gross income as defined in the laws of the United States for the taxable year," and, in part, sets forth modifications to adjusted gross income as so ascertained;

(7) That section 612 of the Tax Law does not include any modification to Federal adjusted gross income for subchapter S undistributed taxable income;

(8) That on April 13, 1964 the Department of Taxation and Finance issued a Statement of Audit Changes adding the aforementioned subchapter S income as additional income subject to tax, and issued a notice of deficiency in accordance therewith.

Based upon the foregoing findings, the State Tax Commission hereby

DECIDES:

(A) That the taxpayer, Charles Senzel's share of undistributed income from Store-Craft Inc., in the sum of $14,688.52 for the year 1960, was includable without modification, in his New York adjusted gross income for said year, and therefore taxable in accordance with section 612, Article 22 of the Tax Law.

(B) That the audit changes and notice of deficiency issued for the year 1960 are correct and are hereby sustained; that the deficiency issued does not contain any tax or other charges which could not have been lawfully demanded, and that the taxpayers' petition for a redetermination of a deficiency of personal income taxes for the year 1960 be and the same is hereby denied.

DATED: Albany, New York On the 15th day of July 1969.

STATE TAX COMMISSION

Norman Gallman
Commissioner

Bruce Manley
Commissioner

Milton Koerner
Commissioner