

STATE OF NEW YORK
STATE TAX COMMISSION

Melcher
P.I. - 1970

In the Matter of the Petition

of
George W. Jr. & Amelia G.
Melcher

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)) 1963

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

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ccH H
99-325

State of New York
County of Albany

Claire A. Draves, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of November, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Everett E. Lewis, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Everett E. Lewis, Esq.
165 West 46th Street
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of November, 1970

Janet Wright

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

George W. Jr. & Amelia G.
Melcher

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) 1963

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Claire A. Draves , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of November , 1970 , she served the within Notice of Decision (or Determination) by (certified) mail upon George W. Jr. & Amelia G. Melcher (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: George W. Jr. & Amelia G. Melcher
210 Booth Avenue
Englewood, New Jersey

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of November , 1970





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
GEORGE W. MELCHER, JR. &	:	DECISION
ANELIA G. MELCHER	:	
for a Redetermination or for Refund	:	
of Personal Income Taxes under	:	
Article 22 of the Tax Law for the	:	
Year 1963	:	

George W. Melcher, Jr. and Anelia G. Melcher have filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the Year 1963 (File # 3-8511513). A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on June 9, 1969 at 3:00 PM. The petitioners appeared by Vladeck, Elias, Frankle, Vladek & Lewis, Esqs., (Everett E. Lewis, Esq., of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq., (Alexander Weiss, Esq., of counsel).

FINDINGS OF FACT

1. The petitioners, George W. Melcher and Anelia G. Melcher were residents of the State of New York in 1962.
2. In 1962 the petitioners sold mutual funds resulting in a capital loss of \$2625.74.
3. In 1962 the petitioners deducted \$1000.00 on their resident tax return leaving a capital loss carry-over credit of \$1625.74.
4. In 1963 petitioners became residents of the State of New Jersey, although they continued to work in the State of New York.
5. Petitioners filed a non-resident personal income tax return for the year 1963, wherein they deducted against income \$1000.00 as a carry-over capital loss.

6. The capital loss was not derived or connected with New York sources.

7. The Income Tax Bureau issued a notice of deficiency and statement of audit changes dated August 9, 1965 disallowing a deduction of \$1000.00 from petitioners New York income on the ground that a loss from the sale of stock is an improper deduction for a non-resident, and recomputed the tax to show a deficiency of \$100.60.

CONCLUSIONS OF LAW

A. The residential status of the petitioners in the year they sought to take the deduction of the capital loss carry-over credit determined whether they might take the deduction, where the capital loss was not derived from or connected with New York sources. Even though petitioners were residents in the year the capital loss was sustained, they were non-residents in the year they sought to deduct the capital loss carry-over credit, and therefore could not take such deduction.

B. The notice of deficiency is sustained and the petition is denied.

DATED: Albany, New York
November 27, 1970

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER