

STATE OF NEW YORK  
STATE TAX COMMISSION

*Edgell Jr., George H.*  
*Personal Income*  
*Article 22*

In the Matter of the Petition

of

George H. Edgell, Jr.

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 thru 1966

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

State of New York  
County of Albany

Martha Funaro, 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 14th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon George H. Edgell, Jr. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Renato Beghe, Esq.  
Carter, Ledyard & Milburn, Esqs.  
2 Wall Street  
New York, New York 10005  
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

14th day of January, 1971.

*Martha Funaro*  
*Joyce S. VanAllen*

STATE OF NEW YORK  
STATE TAX COMMISSION

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c/o Carter, Ledyard & Milburn, Esqs.  
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*Martha Funaro*  
*James S. Sanfilippo*

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE H. EDGELL, Jr.	:	DECISION
	:	
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Years 1960 thru 1966.	:	

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George H. Edgell, Jr., 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 years 1960 thru 1966. A formal hearing was held at the offices of the State Tax Commission, in the City of New York, on September 25, 1968. The taxpayer was represented by Messrs. Carter, Ledyard & Milburn, Attorneys at Law, (Renato Behge, Esq. of Counsel).

FINDINGS OF FACT

1. On April 12, 1967, taxpayer filed New York State Income Tax Resident Returns for the years 1960 thru 1966. For each year the taxpayer also claimed resident credits for taxes paid to the State of New Hampshire on dividends and interest income received as follows:

<u>Year</u>	<u>Credit Claimed</u>
1960	\$2,283.77
1961	\$2,821.34
1962	\$2,799.99
1963	\$3,237.89
1964	\$3,637.36
1965	\$4,126.25
1966	\$4,511.87

Taxpayer subsequently withdrew his claim for credit for 1960.

2. On October 25, 1967, the Income Tax Bureau issued deficiency notice numbered 69600350 as follows:

<u>Year</u>	<u>Amount</u>
1960	\$3,895.05
1961	\$4,657.60
1962	\$3,958.07
1963	\$4,199.22
1964	\$4,523.07
1965	\$4,753.76
1966	\$4,780.95

The deficiencies listed above were based upon a disallowance of the claimed credit and include statutory penalties and interest charges due.

3. On January 8, 1968, taxpayer filed petition for redetermination or refund for the years 1960 thru 1966.

4. During the years in question, taxpayer was a resident of New York because he spent more than 183 days in this state and maintained a 4 1/2 room apartment in New York City. His domicile, however, was in the State of New Hampshire.

5. During this period, taxpayer derived all of his income from intangibles, primarily as beneficiary of trust administered by Mercantile Safe-Deposit and Trust Company of Baltimore, Maryland, as trustee under trust created by others for his benefit, and by the United States Trust Company of New York as trustee of a revocable trust which the taxpayer created for his own benefit.

6. Taxpayer was subject to and paid income taxes pursuant to New Hampshire law on the income derived from the intangibles referred to above. Taxpayer claims that pursuant to Section 363(2) of the Tax Law, he should be allowed a credit against New York State tax liability for taxes paid to New Hampshire based upon income from these intangibles.

7. Section 620 of the Tax Law provides in part, 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 or by the District of Columbia, upon income derived therefrom and subject to tax under this article."

The term "income . . . derived therefrom" restricts the resident credit to the tax on income derived from sources within the other state. The term "income . . . derived therefrom" must be construed so as to accord with the definition of the term "derived from or connected with New York sources" set out in Section 632 of the Tax Law in relation to the adjusted gross income of a nonresident individual. The resident credit is allowable in relation to compensation for personal services performed in the other state, income from a business, trade or profession carried on in the other state, and income from the ownership of real or tangible personal property in the other state. On the other hand, the resident credit does not apply in respect to the tax upon income from intangibles, except where such income is from property employed in a business or profession carried on in the other state. Such is not the case here.

DECISION

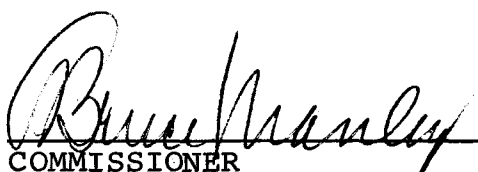
- A. The tax credit claimed is disallowed.
- B. The petition is denied and the deficiency is sustained.

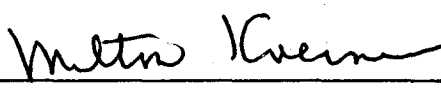
DATED: Albany, New York

STATE TAX COMMISSION

*January 13, 1971,*

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER