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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARTLEY L. & MARGERY SAMUELS

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) 1965.

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 8th day of March, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Mr. & Mrs.
Hartley L. Samuels (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

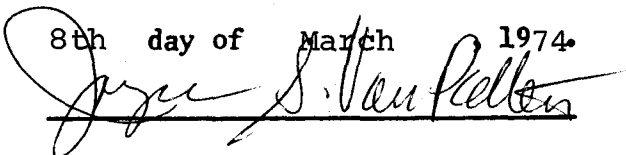
Mr. & Mrs. Hartley L. Samuels
245 East 80th Street
New York, New York 10021

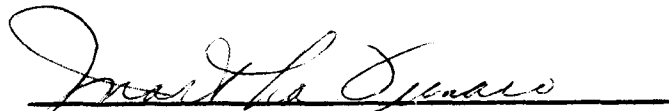
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

8th day of March 1974.


J. S. Van Fleet


Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARTLEY L. & MARGERY SAMUELS

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) 1965

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 20th day of March , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Melvin Semel, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Melvin Semel, Esq.

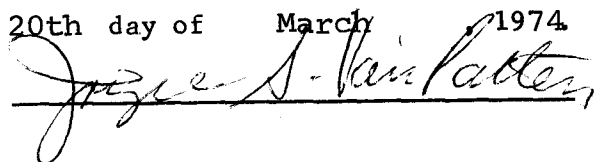
299 Broadway
New York, New York

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

20th day of March , 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARTLEY L. & MARGERY SEMUELS

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)) **1965.**

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 **8th** day of **March**, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon **Melvin Semel,**
Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

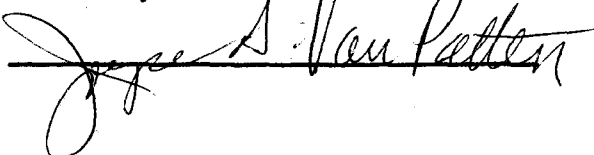
Melvin Semel, Esq.
6 East 45th Street
New York, New York 10017

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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

8th day of **March**, 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino

~~JOHN J. KOENIG~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 8, 1974

Mr. & Mrs. Hartley L. Samuels
245 East 80th Street
New York, New York 10021

Dear Mr. & Mrs. Samuels:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance

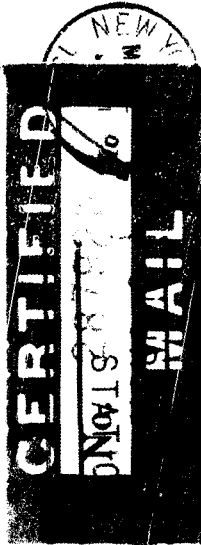
STATE CAMPUS
ALBANY, N. Y. 12227

Melvin Semel, Esq.

6 East 45th Street

New York, New York 10017

FORWARDED



AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

Melvin Semel, Esq.

6 East 45th Street

New York, New York

10017

FORWARDED

CERTIFIED

NOV 18 1973

MAIL

NEW YORK

Handwritten signature and date 10/13

STATE TAX COMMISSION

1. Petitioners, Hartley L. and Margery Samuels, each owned 25% of the stock of Clarkwood Broadcasting Corporation, a Wisconsin corporation.

Judith Schofield owned the other 50%. Petitioners and Judith Schofield were, at all times, New York residents. The corporation was formed for the purpose of operating a radio station in the town of Marchfield, Wisconsin. The corporation was liquidated on November 30, 1965. Its assets were sold by the stockholders in 1966.

2. Petitioners claimed a credit against tax on their return for taxes paid to the State of Wisconsin. The total of the tax paid was \$7,154.86. The amount of credit claimed was reduced to \$4,342.09 by reason of the limitations of section 620(b)(1) of the Tax Law.

3. The tax in the amount of \$7,154.86 for which credit is claimed is one-half of the amount of \$14,309.72 in taxes paid to Wisconsin by Clarkwood Broadcasting Corporation and which reduced the stockholders share of the amounts received in liquidation by that amount.

4. The tax of Clarkwood Broadcasting Corporation was computed under Chapter 71 of the Wisconsin Statutes of 1965 and is measured by net income. For the year involved such net income included gross receipts from current operations of \$82,541.25 and profit from the sale in liquidation of the assets of the corporation in the amount of \$217,212.67.

5. Petitioners assert, and it is not contested, that the liquidation and sale of assets here involved fulfilled all the requirements of section 71.337 of the Wisconsin Statutes (similar to section 337 of the Internal Revenue Code) for the exclusion

from the corporation's income of the gains from the sale of such assets with the sole exception that the shareholders of the corporation were not residents of Wisconsin. The Wisconsin Statute excludes gains or losses in such liquidations only "to the extent that such gain or loss is participated in by Wisconsin resident shareholders" (section 71.337(1)).

7. Petitioners did not deduct the state tax here in question on their Federal personal income tax return.

8. The deficiency in issue is in the amount of \$4,342.09 with interest to the date of the deficiency of \$369.38 and less a credit for a refund calculated on the return of \$78.70 for a net amount of \$4,632.77.

CONCLUSIONS OF LAW

The credit here claimed for taxes paid to Wisconsin cannot be allowed.

The credit provided by New York Tax Law section 620 is only for an income tax upon income both derived from another state and subject to tax in New York.

In this case the income subject to tax in New York is a liquidating dividend considered as the proceeds on the sale of the underlying stock. The income tax of Wisconsin (as further described in Simanco v. Wisc. 57 Wisc. 2d 47; app. dism. 38 L ed 2d 40) is clearly imposed upon the income of the corporation which is received as proceeds of the sale of its tangible assets.

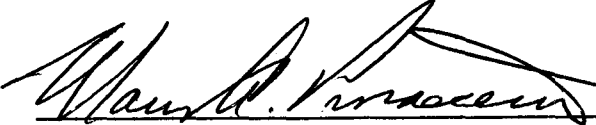
The fact that the net amount received by the stockholders is reduced by the amount of the tax paid by the corporation does not differentiate this tax from any other corporate tax.

DECISION

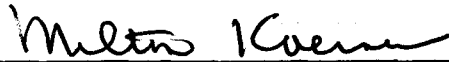
The petition is denied and the deficiency is affirmed together with such additional interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
March 8, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

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STATE TAX COMMISSION

Mario A. Procaccino

~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

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STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Remailed: 3/20/74

DATED: Albany, New York
March 8, 1974

Mr. & Mrs. Hartley L. Samuels
245 East 80th Street
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Nigel G. Wright
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Enc.

cc: Petitioner's Representative
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AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

Melvin Semel, Esq.
299 Broadway
New York, New York

CERTIFIED

No. 253876

MAIL



005465

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for

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HARTLEY L. & MARGERY SAMUELS :
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Year 1965. :

DECISION

Hartley L. and Margery Samuels filed a petition under section 689 of the Tax Law for the redetermination of a deficiency, dated September 25, 1967, in personal income tax under Article 22 of the Tax Law for the year 1965.

A hearing was held on February 7, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Melvin Semel, Esq. The Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a credit against tax as provided in section 620 of the Tax Law for taxes imposed by another state should be granted.

FINDINGS OF FACT

1. Petitioners, Hartley L. and Margery Samuels, each owned 25% of the stock of Clarkwood Broadcasting Corporation, a Wisconsin corporation.

Judith Schofield owned the other 50%. Petitioners and Judith Schofield were, at all times, New York residents. The corporation was formed for the purpose of operating a radio station in the town of Marchfield, Wisconsin. The corporation was liquidated on November 30, 1965. Its assets were sold by the stockholders in 1966.

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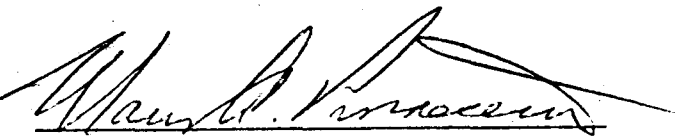
The fact that the net amount received by the stockholders is reduced by the amount of the tax paid by the corporation does not differentiate this tax from any other corporate tax.

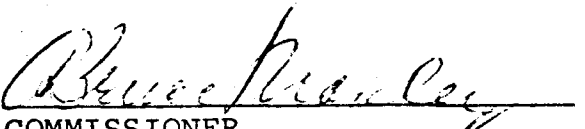
DECISION


The petition is denied and the deficiency is affirmed together with such additional interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
March 8, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER