

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM L. and ELEANOR HARMONAY

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(x) 1963.

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

State of New York
County of Albany

JANET MACK, 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 3rd day of June, 1975, she served the within
Notice of Decision (~~on the 3rd day of June, 1975~~) by (certified) mail upon WILLIAM L. and
ELEANOR HARMONAY (~~representative of the~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. William L. Harmonay
1115 Clifton Avenue
Clifton, New Jersey 07013

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 the~~
~~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

3rd day of June, 1975

James L. Van Patten

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM L. and ELEANOR HARMONAY

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

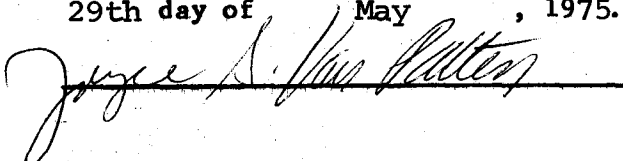
JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of May, 1975, she served the within
Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon WILLIAM L. and
ELEANOR HARMONAY ~~(representative of the)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. William L. Harmonay
567 Yonkers Avenue
Yonkers, New York

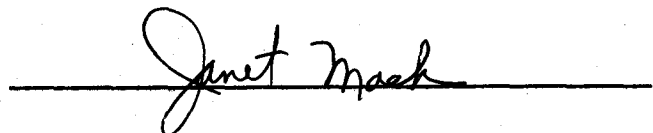
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~(s)~~ 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 May, 1975.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM L. and ELEANOR HARMONAY

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year (x) 1963.

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

State of New York
County of Albany

JANET MACK

, 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 29th day of May, 1975, she served the within

Notice of Decision (~~or Determination~~) by (certified) mail upon RICHARD S. SCOLARO, ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

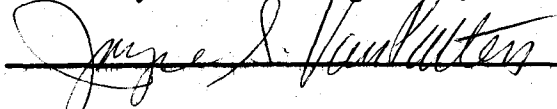
Richard S. Scolaro, Esq.
wrapper addressed as follows: Axenfeld, Webb, Marshall, Bersani & Scolaro
500 Building
500 South Salina Street
Syracuse, New York 13202

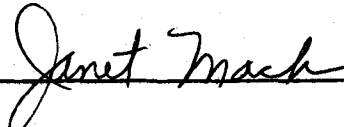
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

29th day of May, 1975.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
James H. Tully, Jr.
PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
May 29, 1975

Mr. and Mrs. William L. Harmonay
567 Yonkers Avenue
Yonkers, New York

Dear Mr. and Mrs. Harmonay:

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

Please take further notice that pursuant to
Section(x) **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,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM L. and ELEANOR HARMONAY	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income	:	
Taxes under Article 22 of the Tax Law	:	
for the Year 1963.	:	

Petitioners, William L. and Eleanor Harmonay, 567 Yonkers Avenue, Yonkers, New York, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1963.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on Friday, July 26, 1974, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by Richard S. Scolaro, Esq., and the Income Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Were legal expenses on a condemnation award deductible in part against interest income where part of the legal expense related to tax advice about the award?

FINDINGS OF FACT

1. Petitioners, William L. and Eleanor Harmonay, timely filed New York State income tax returns for the year 1963.

2. A Notice of Determination of deficiencies in personal income taxes for the year 1963 was issued on March 27, 1967, against the taxpayers under File No. 3-6000531.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. The taxpayers retained a law firm under a general retainer to represent them on a condemnation proceeding. The award was for \$321,847.00. The interest was \$54,311.01.

5. The Income Tax Bureau asserted that all of the interest was taxable as ordinary income.

6. The legal fees on the award was \$49,369.00 and \$3,000.00 on the appeal.

7. The taxpayer contended that the general retainer for the condemnation also covered not only recovery of the award but also rendering tax advice on the award, and to that extent the legal fee was deductible against ordinary income.

CONCLUSIONS OF LAW

The general retainer for the condemnation was to recover damages. The legal tax advice concerning the award was an incident or adjunct to the service. The legal expenses for the condemnation were based on the capital award and should be charged against it and not against ordinary income.

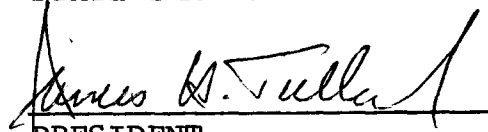
The interest on the award was taxable as ordinary income.

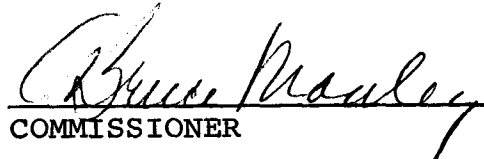
The taxpayers' petition is denied. The determination of the deficiency is sustained.

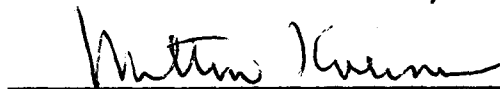
Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
May 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

AD 32 (8-74) BOM

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

☐ Mailed

☒ Mailed

☐ Mailed

RECEIVED

Mr. and Mrs. William L. Harmony

567 Yonkers Avenue

Yonkers, New York

CERTIFIED

No. 201558

MAIL

W. L. H.

W. L. H.

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