

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES W. & ELEANOR STEVENS

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) 1968

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

State of New York  
County of Albany

Katherine D. Manly, 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, 1975, she served the within  
Notice of Decision (~~xx Determination~~) by (certified) mail upon CHARLES W. &  
ELEANOR STEVENS (~~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. Charles W. Stevens  
59 Chimney Corner Circle  
Guilford, Connecticut 06437

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~~  
~~xx~~) 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, 1975.

Katherine D. Manly

Janet Macch

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CHARLES W. & ELEANOR STEVENS

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article (g) 22 of the  
Tax Law for the Year (g) 1968.

State of New York  
County of Albany

Katherine D. Manly, 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, 1975, she served the within  
Notice of Decision ~~xxx xxx xxx xxx~~ by (certified) mail upon Jerome J.

Kahan, C.P.A. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Jerome J. Kahan, C.P.A.  
c/o Leonard D. Alpern & Co.  
200 Garden City Place  
Garden City, New York 11530

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, 1975.

Katherine D. Manly

Janet Mack



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

~~Saul Hackelman, Acting President~~

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**March 20, 1975**

Mr. and Mrs. Charles W. Stevens  
59 Chimney Corner Circle  
Guilford, Connecticut 06437

Dear Mr. and Mrs. Stevens:

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

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CHARLES W. and ELEANOR STEVENS	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

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Charles W. and Eleanor Stevens, 59 Chimney Corner Circle, Guilford, Connecticut 06437, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the Year 1968.

Said deficiency was asserted by notice issued April 10, 1972, under file number 8-13233743 in the amount of \$3,943.23 plus interest of \$706.90 for a total of \$4,650.13.

A hearing was duly held on January 15, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Jerome J. Kahan, C.P.A. of Leonard D. Alpern & Co. of Garden City, New York. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Alexander Weiss, Esq.

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

ISSUE

The issue in this case is whether certain capital gains reported by a partnership were in fact, as alleged by petitioners, the investment income of a separate joint-venture between two individuals who were also partners in the firm but who carried on investment activities separately.

FINDINGS OF FACT

1. Petitioners were residents of Connecticut during the years here in question. They now reside in Florida.
2. Mr. Charles W. Stevens was a partner in the firm of L. H. Rothchild & Co. of 52 Wall Street, New York City, a securities firm which acts as dealers in the over-the-counter market. The other partners were Lewis H. Rothchild of Florida and Victor J. Harsky of New York City. Mr. Stevens' interest was reported at 51 1/4%, Mr. Rothchild's at 38 3/4% and Mr. Harsky's at 10%.
3. The firm maintained a "capital investment account" captioned with the names of Charles W. Stevens and Lewis H. Rothchild. They reported the following transactions: On April 20 and 24, 1967, a total of 1000 shares of "Photon" was sold. These had been acquired on March 28, 1966. They resulted in a capital gain of \$41,150.00. On November 27, December 1, December 12, and December 13, 1967, a total of 750 shares of "Serracin" was sold. These had been acquired on November 16, 1966. They resulted in a capital gain of \$40,025.00.

From this account the amount of \$46,391.51 was carried to a "Charles W. Stevens capital account" and the sum of \$34,783.19 was carried to a "Lewis H. Rothchild capital account". These capital accounts also contained debits from drawing accounts and credits from profit and loss.

4. On its New York State partnership return the firm reported ordinary income of \$73,023.28 and capital gains of \$81,175.00 which total \$154,198.28. The partners' distributions were shown to be for Mr. Stevens, ordinary income of \$32,635.12 and capital gain of \$46,391.51 which total \$79,026.63; for Mr. Rothchild ordinary income of \$24,968.33 and capital gain of \$34,783.49 which total \$59,751.82, and for Mr. Harsky ordinary income of \$14,419.83 and no capital gain. The figure shown for capital gain of \$14,419.83 is in error and the correct figure, as shown in the Federal return, is \$15,419.83. It is noted that each partner did receive exactly his proportionate share of the totals of the firm's total of reported ordinary income and capital gains.

5. Mr. Stevens did not appear to testify. His representative could not produce a copy of the Rothchild partnership agreement.

CONCLUSIONS OF LAW

The capital gains here in issue have not been shown to be anything other than part of the business income of the Rothchild partnership. No separate joint-venture has been proved.

The deficiency is correct and is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
March 20, 1975

STATE TAX COMMISSION

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PRESIDENT

  
COMMISSIONER

  
COMMISSIONER