

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Robert & Barbara Okin :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1969-1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of November, 1979, he served the within notice of Decision by certified mail upon Robert & Barbara Okin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert & Barbara Okin
16 Linden Ave.
West Orange, NJ 07052

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Robert Okin

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Unincorporated Business Tax :
under Article 23 of the Tax Law :
for the Years 1969-1972. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of November, 1979, he served the within notice of Decision by certified mail upon Robert Okin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Okin
16 Linden Ave.
West Orange, NJ 07052

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

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In the Matter of the Petition :
of
Robert & Barbara Okin :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1969-1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of November, 1979, he served the within notice of Decision by certified mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carlino, Pearsall & Soviero
114 Old Country Rd.
Mineola, NY 11501

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of 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
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Robert Okin :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1969-1972. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of November, 1979, he served the within notice of Decision by certified mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carlino, Pearsall & Soviero
114 Old Country Rd.
Mineola, NY 11501

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of 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
16th day of November, 1979.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 16, 1979

Robert & Barbara Okin
16 Linden Ave.
West Orange, NJ 07052

Dear Mr. & Mrs. Okin:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Carlino, Pearsall & Soviero
114 Old Country Rd.
Mineola, NY 11501
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 16, 1979

Robert Okin
16 Linden Ave.
West Orange, NJ 07052

Dear Mr. Okin:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 722 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Carlino, Pearsall & Soviero
114 Old Country Rd.
Mineola, NY 11501
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
ROBERT OKIN and BARBARA OKIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1969, 1970, 1971 and 1972.	:	

Petitioners, Robert and Barbara Okin, 16 Linden Avenue, West Orange, New Jersey 07052, filed petitions for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1969, 1970, 1971 and 1972 (File Nos. 13339 and 13340).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 25, 1977 at 10:45 A.M. Petitioners appeared by Joseph F. Carlino, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether dividend income received by petitioner Robert Okin from stock of Faberge, Inc. was subject to unincorporated business tax.

II. Whether the capital gain derived from the sale of stock of Faberge, Inc. by petitioners, Robert Okin and Barbara Okin, was subject to unincorporated business tax.

III. Whether petitioner Robert Okin may properly allocate his income for 1969, 1970, 1971 and 1972.

FINDINGS OF FACT

1. Petitioners, Robert and Barbara Okin, filed joint New York State income tax nonresident returns for 1969, 1970 and 1971. For 1972 petitioner Robert Okin filed a separate nonresident return. He also filed unincorporated business tax returns for all years at issue on his income derived from his activities as a business consultant and attorney. He did not pay unincorporated business tax for any of the years at issue, because his income as allocated to New York was less than the exemption provided for by law.

2. On April 12, 1974, as the result of a field audit, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioner Robert Okin for unincorporated business tax of \$78,773.87 for 1969, 1970, 1971 and 1972, and personal income tax of \$1,005.16 for 1972, plus interest. The Income Tax Bureau issued said documents, based on its contention that the income derived from petitioner Robert Okin's activities as a business consultant and attorney was allocable 100% to New York State. Furthermore, dividends received and capital gain income enjoyed from the subsequent sale of Faberge, Inc. stock was held subject to unincorporated business tax, since the Income Tax Bureau contended that said stock was a "business asset."

Under the same date, a second Statement of Audit Changes and a second Notice of Deficiency were issued against petitioners, Robert and Barbara Okin, imposing personal income taxes of \$81,939.41, plus interest, for 1969, 1970 and 1971, based on the aforementioned contentions.

For 1971, the recomputation of taxes was also based on an adjustment to personal expenses as the result of a Federal audit.

3. From January 1959 through 1963, petitioner Robert Okin was chairman of the Board of Directors, vice-president and a director of Rayette, Inc.

(predecessor to Faberge, Inc.), and received a salary for services rendered. Prior to commencing his employment and in anticipation of same, petitioner Robert Okin purchased 2,900 shares of stock of Rayette, Inc. in September of 1958. Subsequent acquisitions were made while still in the employ of Rayette, Inc. by virtue of exercising employee stock options which were granted on May 7, 1959. Rayette, Inc. subsequently became Faberge, Inc. and petitioner Robert Okin sold the Faberge, Inc. stock at issue during the period 1969 through 1972.

4. In connection with his consulting activities, petitioner Robert Okin rendered personal services to clients in the management of securities, portfolios, real estate, and legal services of a personal nature. One of his clients was Mr. George Barry, an officer and succeeding chairman of the Board of Directors of Faberge, Inc.

5. Petitioner Robert Okin's office which was used in connection with his consulting activities was located at 40 Wall Street, New York, New York. Additionally, he contended that he used part of the basement of his personal residence as an office, containing a desk, bookcases and a telephone. He contended that this area constituted a bona fide business office.

CONCLUSIONS OF LAW

A. That petitioner Robert Okin has failed to sustain the burden of proof which requires him to show that the income derived from his activities as a business consultant and attorney should be allocated to sources within and without New York State; therefore, said income is considered to be derived solely from New York Sources, within the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.13 and 131.21.

B. That petitioner Robert Okin's purchases of Rayette, Inc. stock prior to his employment by said corporation and pursuant to employee stock-option

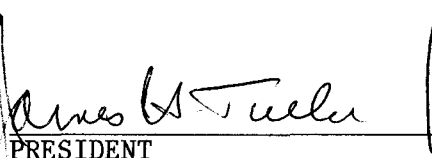
plans during his employment, was for investment purposes, and was not connected with his self-employed business activities; therefore, neither the receipt of dividends, nor the capital gains received from the sale of Faberge, Inc. stock constituted unincorporated business gross income under section 705 of the Tax Law. Furthermore, since said investment income was not employed in petitioner Robert Okin's business activities, it is not properly includable in the non-resident petitioners' New York income, within the meaning and intent of section 632(b)(2) of the Tax Law.

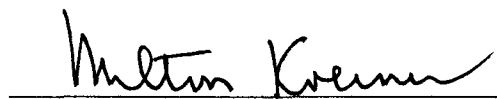
C. That the petitions of Robert Okin and Barbara Okin are granted to the extent provided in Conclusion of Law "B". The Income Tax Bureau is hereby directed to modify the notices of deficiency issued April 12, 1974, but except as so granted, the petitions of Robert and Barbara Okin are in all other respects denied.

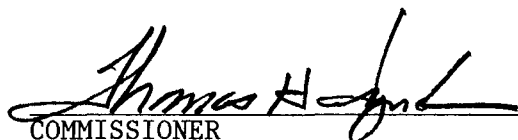
DATED: Albany, New York

NOV 16 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER