

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert D. & Elaine M. Power :
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 Year 1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

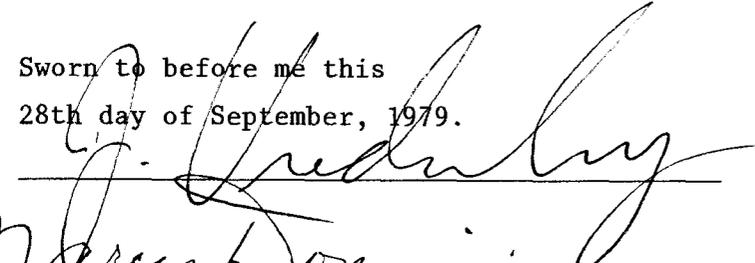
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Robert D. & Elaine M. Power, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert D. & Elaine M. Power
1111 Park Ave.
New York, NY 10028

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
28th day of September, 1979.




STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert D. & Elaine M. Power :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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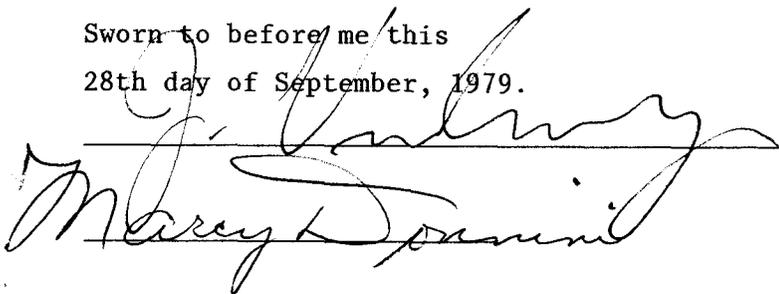
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Fred Bornstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Fred Bornstein
Fields, Fischgrund & Aerenson
420 Lexington Ave.
New York, NY 10017

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
28th day of September, 1979.



Mary Jo Spurr



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

STATE TAX COMMISSION
JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Robert D. & Elaine M. Power
1111 Park Ave.
New York, NY 10028

Dear Mr. & Mrs. Power:

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert H. Tully".

cc: Petitioner's Representative
Fred Bornstein
Fields, Fischgrund & Aerenson
420 Lexington Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 :
ROBERT D. POWER and ELIANE M. POWER : DECISION
 :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :

Petitioners, Robert D. Power and Eliane M. Power, 1111 Park Avenue, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 12313).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 16, 1977 at 1:15 P.M. Petitioner appeared by Fields, Fischgrund and Aerenon (Fred Bornstein, CPA and Max Zipper, CPA). The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether petitioners were domiciled in New York or whether a change of domicile occurred during 1971.

II. Whether the guaranteed payments (salary and interest) received by petitioner Robert D. Power from a partnership, is a distribution of partnership income and is wholly taxable to New York State during the resident period.

FINDINGS OF FACT

1. Petitioners, Robert D. Power and Eliane M. Power, filed a New York State income tax resident return for 1971, on which they indicated their period of New York State residence as September 15, 1971 to December 31, 1971. On said returns, they reported total New York income of \$14,495.00.

2. On April 11, 1975, the Income Tax Bureau issued a Statement of Audit

Changes to petitioners. This was done on the grounds that they were domiciled in New York State, that they were taxable on income from all sources, and that all partnership distributions from Hallgarten and Company ("Hallgarten") were reportable on the New York State resident return. The income shown on the Statement included interest income of \$2,646.00. Accordingly, the Bureau issued a Notice of Deficiency against them, asserting personal income tax of \$4,400.22, plus interest of \$789.53, for a total of \$5,189.75.

3. Petitioner Robert D. Power was born in the United Kingdom and lived there as a United States citizen (except for his attendance at college in the United States in 1959 and for approximately two and one-half years thereafter). On September 15, 1971, he and his wife moved to the United States and established a new residence at 1111 Park Avenue, New York, New York. Until they moved to New York, petitioners owned a home at 33 Margaretta Terrace, London S.W. 3, England, which was their principal residence and domicile.

4. Petitioner Robert D. Power was a partner of Hallgarten for all of 1971. Prior to that, he was an employee of Hallgarten. The partnership return filed by Hallgarten indicated that part of Mr. Power's distribution consisted of \$21,819.00 in ordinary income and \$28,000 in payments to partners (salary and interest). Petitioners contended that the salary and interest were guaranteed payments, and were not a distribution of the profits of the partnership; therefore, said salary and interest do not come within the meaning of partnership income as that term is used in 20 NYCRR 148.6.

5. The interest income received by petitioners and referred to in Finding of Fact "2" was interest income from United States Treasury Bills and Notes.

6. Petitioners contended that capital loss was computed incorrectly, since capital losses which were attributable to petitioner's nonresident period were included in the calculation.

CONCLUSIONS OF LAW

A. That petitioners, Robert D. and Eliane M. Power, were not domiciliaries of New York State prior to September 15, 1971. Petitioners became residents and domiciliaries of New York State on September 15, 1971, and were required to file their return in accordance with 20 NYCRR 148 and with section 654 of the Tax Law.

B. That Treasury Regulation section 1.707-1(c) provides that guaranteed payments are regarded as a partner's distributive share of ordinary income; therefore, the guaranteed payments are considered partnership income within 20 NYCRR 148.6.

C. That under section 612(c)(2) of the Tax Law, the interest income referred to in Finding of Fact "5" is exempt from New York State personal income tax.

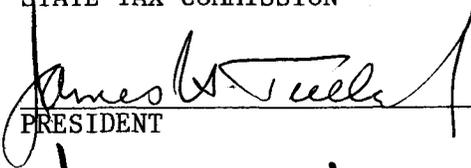
D. That the Income Tax Bureau is directed to recompute capital gain or loss in the manner described in 20 NYCRR 148.7.

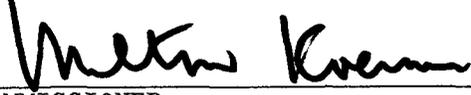
E. That the petition of Robert D. Power and Eliane M. Power is granted to the extent provided for by Conclusions of Law, "A", "C" and "D". The Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued on April 11, 1975 and that, except as so granted, the petition is in all other respects denied.

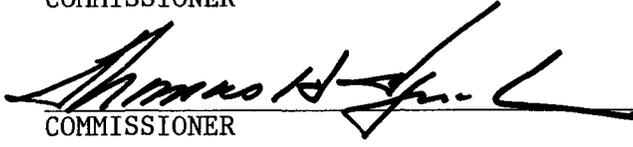
DATED: Albany, New York

SEP 28 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER