

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Jacob & Florence Bernstein :

AFFIDAVIT OF MAILING

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 1972 - 1974. :

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 18th day of June, 1980, he served the within notice of Decision by certified mail upon Jacob & Florence Bernstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jacob & Florence Bernstein
5610 S. Travellers Farm La.
Fort Lauderdale, FL 33313

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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jacob & Florence Bernstein :
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 1972 - 1974. :

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 18th day of June, 1980, he served the within notice of Decision by certified mail upon Herbert Granoff 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. Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020

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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 18, 1980

Jacob & Florence Bernstein
5610 S. Travellers Farm La.
Fort Lauderdale, FL 33313

Dear Mr. & Mrs. Bernstein:

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
Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

JACOB BERNSTEIN and FLORENCE BERNSTEIN : DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1972, 1973 :
and 1974. :

Petitioners, Jacob Bernstein and Florence Bernstein, 5610 S. Travelers Palm Lane, Fort Lauderdale, Florida 33313, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972, 1973 and 1974 (File No. 15049).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1978 at 9:15 A.M. Petitioners appeared by Herbert Granoff, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether interest income paid to a nonresident holder of purchase money mortgages on real property in New York State is taxable to the nonresident.

FINDINGS OF FACT

1. Petitioners, Jacob Bernstein and Florence Bernstein, filed a resident New York State Combined Income Tax Return (Form IT-209) for the fiscal year ended August 31, 1971. Petitioners filed no New York State income tax returns for 1972, 1973 or 1974, contending that they had no taxable income from New York State.

2. On April 30, 1976, the Audit Division issued a Notice of Deficiency to petitioners which showed the following:

f/y/e 8/31	<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1972	\$2,433.03	\$492.20	\$2,925.23
1973	2,013.61	358.16	2,371.77
1974	613.66	67.33	680.99
TOTAL	<u>\$5,060.30</u>	<u>\$917.69</u>	<u>\$5,977.99</u>

On the same date, a Statement of Audit Changes was sent by the Audit Division to petitioners, in which the following was stated:

"Interest income received on installment sale of New York partnership interest is considered to be income derived from or connected with New York sources taxable to a nonresident under Article 22 of the Tax Law since the items sold are assets attributable to a business, trade, profession or occupation carried on in this State."

3. On May 26, 1976, petitioners filed a petition for revision of a determination or for refund of tax paid.

4. Petitioner Jacob Bernstein was employed primarily as a school teacher, first in the public school system and then as the operator of a private school in Brooklyn. Petitioner Florence Bernstein was a housewife. With Jacob Bernstein's father Nathan and with his sister Betty Appleman and her husband Ira Appleman, petitioners entered a partnership to purchase and operate six apartment houses and one commercial property. The properties were purchased as tenancies in common. Ira and Betty Appleman kept the books and did most of the actual renting and maintenance of the real property.

5. On November 3, 1970, an agreement was entered into by and between petitioners (as sellers) and the remaining partners (as purchasers) that all petitioners' right, title and interest to and in the real property owned by all the parties as tenants in common, was transferred to Nathan Bernstein, Ira Appleman and Betty Appleman. The purchasers paid 29 percent of the selling price in cash, and gave a purchase-money second mortgage for \$580,000.00 payable in quarterly payments, with 7 percent interest until September 30, 1980.

6. As each parcel of real property was purchased by petitioners and their fellow tenants in common, a certificate of partnership doing business under an assumed name, was filed with the county clerk as then required by section 440 of the Penal Law of New York State. The articles of agreement for the installment sale of petitioners' interest in those properties required that petitioners' execute certificates of discontinuance of doing business as a partnership under the assumed name.

7. Petitioners became residents of the State of Florida in July, 1971.

CONCLUSIONS OF LAW

A. That interest income on installment obligations arising from the sale of New York State business realty is taxable to a nonresident. Rental property is considered to be business property. Petitioners owned an undivided interest in the rental real property owned by the group of tenants in common. When petitioners sold that interest, they took back a determinate right to receive installment payments of the purchase money mortgage. Before and after the sale, petitioners had an interest in real property in New York State. The ownership of any interest in real or tangible personal property connected with New York sources is an item of income, within the meaning and intent of section 632(b)(1)(A) of the Tax Law and 20 NYCRR 131.3.

B. That the petition of Jacob Bernstein and Florence Bernstein is denied and the Notice of Deficiency dated April 30, 1976 is sustained.

DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER