In the Matter of the Petition

of

Domenick & Fannie Mattielli

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 Year 1973.

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Domenick & Fannie Mattielli, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Domenick & Fannie Mattielli 136 W. 21st St.

Bayonne, NJ 07002

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 20th day of June, 1980.

Janne Knapp

In the Matter of the Petition

of

Domenick & Fannie Mattielli

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 Year 1973.

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Frederick Doppelt 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. Frederick Doppelt 103 Park 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 20th day of June, 1980.

Joanne Knapp

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

June 20, 1980

Domenick & Fannie Mattielli 136 W. 21st St. Bayonne, NJ 07002

Dear Mr. & Mrs. Mattielli:

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 Frederick Doppelt 103 Park Ave. New York, NY 10017 Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition

of

DOMENICK and FANNIE MATTIELLI : DECISION

for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1973.

Petitioners, Domenick and Fannie Mattielli, 136 West 21st Street, Bayonne, New Jersey 07002, 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 1972 (File No. 17615).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 17, 1979 at 10:45 A.M. Petitioners appeared by Frederick Doppelt, Esq. The Audit Division appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether a distribution from a nonresident estate to a nonresident taxpayer is taxable.

FINDINGS OF FACT

1. Petitioners, Domenick and Fannie Mattielli, timely filed a joint New York State Income Tax Nonresident Return for the year 1973, on which salary income received from a New York employer was reported. A capital gain was reported for Federal personal income tax purposes, but not for New York State personal income tax purposes.

2. On January 24, 1977, the Audit Division issued a Notice of Deficiency in the sum of \$917.86, along with an explanatory Statement of Audit Changes, which stated:

"Upon audit of the Fiduciary return for the Estate of LOUIS MATTIELLI, it has been determined that \$10,400.00 of the distribution received by you from the Estate is from New York sources. As such, it is includable in New York income. As the distribution represents long term capital gains, the capital gain deduction has been allowed."

- 3. Petitioner Domenick Mattielli was a beneficiary of the Estate of Iouis Mattielli. The decedent, Iouis Mattielli, was a resident of the State of New Jersey when he died on July 23, 1971.
- 4. Decedent, Louis Mattielli, was a member of a partnership which conducted a securities exchange business in New York State under the name and style of Mattielli and Company. As a partner, decedent had an interest in the New York Stock Exchange Seat ("Seat") used by the partnership in its business.
- 5. Pursuant to the terms of the partnership agreement, upon decedent's death, he ceased to be a partner but was entitled to a percentage of the proceeds of the Seat in the event it was sold.
- 6. On December 15, 1972, the Seat was sold, and decedent's share of the profit derived therefrom was reported by the Estate of Louis Mattielli as a long-term capital gain on its United States Fiduciary Income Tax Return for the fiscal year October 1, 1972 to September 30, 1973. The estate reported a gain of \$35,080.00 from the sale of the Seat and was included in the net long-term capital gain of \$76,072.00 reported, of which \$72,146.00 was distributed to the beneficiaries. Petitioner Domenick Mattielli received a long-term capital gain distribution of \$14,429.00 from the estate.

CONCLUSIONS OF LAW

A. That an estate is a mere conduit of distributed income, and such income as distributed to the beneficiary retains the same character which it had in the hands of the fiduciary in accordance with the meaning and intent of section 639(a)(3)(B).

B. That a nonresident beneficiary of any resident or nonresident estate is taxable on his share of Federal distributable net income to the extent that his share is from New York sources in accordance with the meaning and intent of section 639(a) of the Tax Law and 20 NYCRR 135.25.

C. That the long-term capital gain distributed by the fiduciary constitutes income derived from property employed in a business, trade, profession or occupation carried on in New York State and must be included in the New York adjusted gross income of petitioners, Domenick and Fannie Mattielli, pursuant to section 632 of the Tax Law.

D. That the petition of Domenick and Fannie Mattielli is granted to the extent that the long-term capital gain attributable to New York sources is \$6,654.00, as recomputed within the purview of section 639(a)(3)(A) of the Tax Law.

E. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued January 24, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 2 0 1980

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER