

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George (dec'd) Rapoport :
and Mildred Rapoport : 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 1970 - 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 25th day of July, 1980, he served the within notice of Decision by certified mail upon George (dec'd) Rapoport, and Mildred Rapoport, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

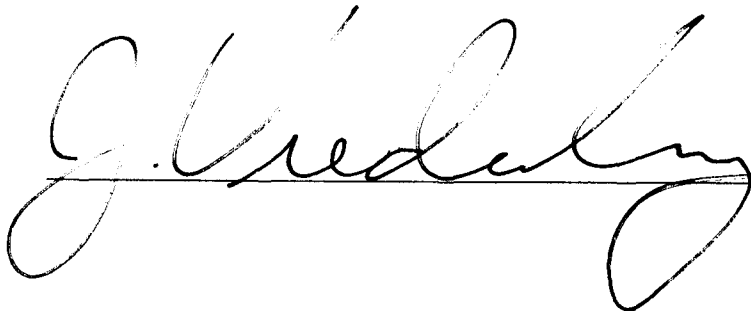
George (dec'd) Rapoport
and Mildred Rapoport
5151 Collins Ave.
Miami Beach, FL 33140

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
25th day of July, 1980.

Deborah A. Bark



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George (dec'd) Rapoport :
and Mildred Rapoport : AFFIDAVIT OF MAILING
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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 25th day of July, 1980, he served the within notice of Decision by certified mail upon Howard Denburg 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. Howard Denburg
Parker, Chapin, Flattau & Klimpl
530 Fifth Ave.
New York, NY 10036

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
25th day of July, 1980.

Deborah A Bank

J. Vredenburg

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

July 25, 1980

George (dec'd) Rapoport
and Mildred Rapoport
5151 Collins Ave.
Miami Beach, FL 33140

Dear Mrs. Rapoport:

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
Howard Denburg
Parker, Chapin, Flattau & Klimpl
530 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
GEORGE RAPOPORT (Deceased)	:	DECISION
and	:	
MILDRED RAPOPORT	:	
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1970 through	:	
1974.	:	

Petitioners, George Rapoport (Deceased) and Mildred Rapoport, 5151 Collins Avenue, Miami Beach, Florida 33140, filed petitions for redetermination of deficiencies or for refund of personal income taxes under Article 22 of the Tax Law for the years 1970 through 1974 (File Nos. 14257 and 19342).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 26, 1977, at 11:15 A.M. Petitioners appeared by Parker, Chapin, Flattau & Klimpl, Esqs. (Howard Denburg, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund and Louis Senft, Esqs., of counsel).

ISSUE

Whether income on a mortgage note held by nonresident petitioners is subject to New York personal income tax.

FINDINGS OF FACT

1. Petitioners, George Rapoport (deceased) and Mildred Rapoport, on August 6, 1973, filed New York State combined income tax returns for the tax years 1970 through 1972. Petitioner, Mildred Rapoport, timely filed New York State income tax nonresident returns for tax years 1973 and 1974. On May 31, 1975, an amended 1974 return was filed with payment of \$86.00 for additional tax due shown on the return.

2. On March 31, 1975 the Audit Division issued two notices of deficiency. One Notice of Deficiency was issued to the Estate of George Rapoport, Mildred Rapoport, Executrix for 1970, 1971 and 1972 asserting a tax of \$2,079.37 plus interest of \$404.49. The second Notice of Deficiency was issued to Mildred Rapoport for 1970, 1971 and 1972 asserting a tax of \$2,351.67 plus interest of \$451.69. On March 28, 1977, the Audit Division issued a Notice of Deficiency to petitioner, Mildred Rapoport, for the tax years 1973 and 1974, asserting a tax of \$6,982.71, plus interest of \$1,383.15.

3. Petitioners, residents of Florida, owned as tenants in common an apartment building at 42-45 Kissena Boulevard, Flushing, New York. In June, 1969, they sold the property, taking back from the purchaser a mortgage note dated June 4, 1969, for \$635,000. The note was secured by a second mortgage on the property.

4. The terms of the mortgage note provide for quarterly annual payments of \$12,700 to be paid on the first day of September, 1969, and quarterly thereafter; each of such quarter annual payments to be applied first towards the payment of interest and the balance towards the payment of principal.

CONCLUSIONS OF LAW

A. That during the years in dispute, petitioners received income on a mortgage note. The income was comprised of payments of interest and principal. That the principal payments constitute income from New York sources within the meaning and intent of section 632(b) (1) (a) of the Tax Law and 20 NYCRR 131.3 and accordingly are subject to New York State tax.

B. That interest received from the mortgage note held by petitioners constituted income derived from intangible personal property attributable to the sale of real property, an apartment building, located in New York State within the meaning and intent of section 632(b) (2) of the Tax Law and 20 NYCRR 131.5 and accordingly is subject to New York State tax.

C. That the petitions of George Rapoport (Deceased) and Mildred Rapoport, are denied and the notices of deficiency dated March 31, 1975 and the Notice of Deficiency dated March 28, 1977 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JUL 25 1980

STATE TAX COMMISSION

James G. Tuel
PRESIDENT

Thomas J. C.
COMMISSIONER

Francis Q. Koenig
COMMISSIONER

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George (dec'd) Rapoport
and Mildred Rapoport
2515 - NE 2 Court
Boynton Beach, FL

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
5th day of September, 1980.

Debbie Bank

J. Vredenburg