STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GEORGE E. AND CAROL L. BELLO	:	DETERMINATION DTA NO. 806543
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1982 and 1983.	:	

Petitioners, George E. and Carol L. Bello, 164 Mountainwood Road, Stamford, Connecticut 06903, 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 1982 and 1983.

A hearing was commenced before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on January 8, 1990 at 1:15 P.M., and continued at the same location before the same Administrative Law Judge on March 1, 1991 at 10:45 A.M. The Division of Taxation filed its briefs and documentation by May 18, 1991. Petitioners filed additional documentation and briefs by June 5, 1991. Petitioners appeared by Richard DeMarco, Esq., Thomas Butler, Esq. and Dennis O'Leary, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency with regard to the year 1982 was issued in a timely manner.

II. If the Notice of Deficiency with regard to the year 1982 was in fact timely, whether the Division of Taxation properly disallowed Schedule C expenses, partnership gains and losses, and various itemized deductionstaken by petitioners on their New York State Nonresident Income Tax Return for 1982.

III. Whether the Division of Taxation properly disallowed partnership gains and losses and

various itemized deductions and properly included income from a Schedule C business and properly modified depreciation taken with regard to another partnership property for 1983.

FINDINGS OF FACT

On September 25, 1987, the Division of Taxation issued to petitioners, George E. and Carol L. Bello, a Notice of Deficiency setting forth additional tax due of $30,130.80, penalty of $1,506.54, and interest of $11,334.61, for a total amount due of $42,971.95 for the years 1982 and 1983.

Pursuant to a properly executed application for extension of time to file for the year 1982, petitioners filed Form IT-203, Nonresident Income Tax Return, for 1982 on or about October 20, 1983.

Subsequently, on September 19, 1985, petitioners filed an amended Form IT-203 for the year 1982.

On October 19, 1984, pursuant to a properly executed application for extension of time to file, petitioners filed Form IT-203, Nonresident Income Tax Return for the year 1983. Subsequently, petitioners filed an amended Form IT-203 on July 30, 1985, which included Schedule C income of $13,389.00. However, on September 19, 1985, petitioners filed a second amended New York State Nonresident Income Tax Return, Form IT-203, which eliminated said Schedule C income.

On October 1 and 2, 1986, petitioners and the Division of Taxation, respectively, executed a consent fixing the period of limitation upon assessment of personal income and unincorporated business taxes allowing the Division until April 30, 1987 to assess personal income taxes against George E. and Carol L. Bello for the year ended December 31, 1982.

After examining petitioners' returns for the years 1982 and 1983 and documentation produced by petitioners on audit, the auditor made the following modifications:

1982

(a) disallowed expenses claimed on petitioners' Schedule C for a hanger business in the sum of $44,349.00 while including the income from said Schedule C business in the

sum of $13,185.00;

(b) disallowed gains and losses from four separate partnerships, i.e., B.W. 1980 Energy Ltd. Partners, B.W. 1981 Energy Ltd. Partners, B.W. 1982 Energy Ltd. Partners and Okmulgee Ltd., in the sum of $265,296.00;

(c) disallowed interest expense petitioners claimed with regard to an account with Salomon Brothers in the sum of $211,068.00 and interest expense on alleged loans with Banker's Trust in the sum of $90,820.00; and

(d) disallowed unreimbursed business expenses in the sum of $18,340.00 and short dividends in the sum of $17,000.00.

1983

For the tax year 1983, the Division made the following adjustments to petitioners' return:

(a) with regard to business income claimed on Schedule C for the hanger business, the Division included gross receipts from said business in the sum of $112,640.00 and disallowed all expenses with regard to said business for lack of substantiation;

(b) disallowed partnership gains and losses from non-New York partnerships, i.e., B.W. 1980 Energy Ltd. Partners, B.W. 1981 Energy Ltd. Partners, B.W. 1982 Energy Ltd. Partners, Okmulgee Ltd. Partners, and Reliance Figueroa Associates, in the sum of $367,416.00;

(c) recalculated petitioners' accelerated cost recovery system depreciation modification with regard to Reliance Figueroa Associates, and increased same by $48,314.00;

(d) disallowed interest expense claimed by petitioners with regard to the accounts at Salomon Brothers ($349,053.00) and Bankers Trust ($63,071.00); and

(e) disallowed business entertainment expenses in the sum of $18,612.87, business gifts in the sum of $6,651.82 and home office expense and Christmas cards in the sum of $1,468.00.

The auditor did not find petitioners' substantiation adequate.

With regard to the year 1982, the Division found New York State taxable income after audit to be $63,830.00 as compared with the zero taxable income reported on the amended IT-203. Therefore, the adjustment to taxable income was an additional $63,830.00. With regard to the year 1983, the Division found New York taxable income after audit to be $250,278.00 compared to the zero New York taxable income stated on the amended IT-203 for an upward adjustment of $250,278.00.

In response to these adjustments, petitioners produced various documents both at formal hearing and subsequent thereto.[1] With

regard to the Schedule C business, petitioners' representatives, in unsworn statements, argued that since the Internal Revenue Service had determined that the Schedule C business was not "a transaction...entered into for profit but was a transaction structured for tax avoidance", it properly omitted all reference to said business on the amended returns. In support of this allegation, petitioners' representative submitted the February 8, 1985 letter from the Internal Revenue Service indicating an adjustment for the year 1978.

It is noted that the Division disallowed the expenses and added back the gross income from the Schedule C business without an allowance for cost of goods sold, due to lack of substantiation. Even though given additional time to supply further evidence, petitioners did not submit substantiation of expenses or income with regard to the Schedule C business for

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[1]The parties agreed at the first hearing held on January 8, 1990 to be bound by the results of a case called Matter of Michael J. and Kathleen T. Blake, DTA No. 802739, with regard to the issues of the partnership gains and losses and the Schedule C hanger business. However, the Blake case was not dispositive of those issues and the parties were recalled to a hearing on March 1, 1991 for the exclusive purpose of addressing those issues. On that latter date, no testimony was offered by either party and, even though afforded yet another opportunity to submit evidence at the hearing, petitioners only submitted a letter, dated April 30, 1991 (subsequent to the hearing), which enclosed a letter from Stewart Gerson, vice-president and controller of Reliance Development Group, Inc., concerning Reliance Figueroa Associates and a Schedule K-1 issued by Reliance Figueroa Associates to George Bello for the year 1983. The Division submitted United States partnership returns for B.W. 1982 Ltd. Energy Partners, Okmulgee Limited Partners and Chatham Energy Partners for the years 1982 and 1983.

either 1982 or 1983. Petitioners submitted a letter dated April 30, 1991 with attached letter from the controller, Mr. Stewart J. Gerson, concerning the business of Reliance Figueroa Assoc. and a copy of Mr. Bello's 1983 Schedule K-1 from Reliance Figueroa Assoc. reportedly establishing the partnership's New York

locus. No other submissions were made subsequent to the March 1, 1991 hearing.

In its March 29, 1990 brief, petitioners conceded that the short dividend deduction they took in 1982 was properly disallowed and that a $10,160.00 short dividend deduction should have been allowed for the year 1983. In its May 18, 1990 brief, the Division of Taxation agreed to allow said $10,160.00 short dividend deduction for the year 1983.

Petitioners submitted statements for an account with Salomon Brothers, Inc., member of the New York Stock Exchange, Inc., customer account number 017634808010, for the period July 31, 1982 through December 30, 1983. Petitioners also included summary sheets, presumably prepared by them, with regard to Salomon Brothers transactions for both years. Petitioners also submitted an "Analysis of Salomon A/C-Income Method" which expressed income from treasury notes over total income as a percentage (12.3%) and multiplied said percentage by interest expense to arrive at the figure they included on their amended return, line 64, "other adjustments to New York itemized deductions". However, it is noted that the total interest expense charged to the account in 1982 was listed as $255,094.22 on "page 1" of the December 1982 account statement but the interest expense utilized for the year 1982 by petitioner and accepted by the Division was listed as $211,068.00. Since there was no testimony in support of these documents, the inconsistencies were never explained.

Likewise, for the year 1983, the percentage of treasury note income to total income was expressed as a percentage, 63.66%, which was multiplied by interest expense of $349,053.00. The Salomon Brothers statement for the period beginning December 1, 1983 noted interest charged to the account in 1983 of $418,868.94. Again, no explanation of this apparent inconsistency was given. Furthermore, many aspects of the source documentation provided,

i.e., the Salomon Brothers account statements, were not intelligible, particularly since no one testified with regard to their contents.

With regard to the interest expense allegedly incurred by petitioners on their Bankers Trust loans for the years 1982 and 1983, petitioners submitted copies of twelve checks drawn on the account of George E. and Carol Lee Bello from the Fidelity Trust Company of Stamford, Connecticut, indicating payments of various sums to Bankers Trust Company and a handprinted, purported summary of transactions in the Bankers Trust Company loan account from September 16, 1977 through June 2, 1982. Additionally, on February 13, 1990, petitioners submitted what were alleged to be copies of receipts from Bankers Trust Company detailing and confirming interest paid by the taxpayers during 1982 and 1983. The statements, which do not bear the name Bankers Trust Company anywhere thereon, indicate loan numbers, dates, amounts outstanding, annual percentage rates, days and amounts accrued. There are also handwritten notations of amounts paid with regard to these receipts.

Petitioners submitted various documentation supporting approximately $5,562.61 of business entertainment expenses and $4,668.94 of business gifts. Petitioners claimed that these expenses for the year 1982 only were all ordinary and necessary business expenses pursuant to Internal Revenue Code § 162(a) and the regulations promulgated thereunder. Said documents were submitted by petitioners' representative to the Division's auditor. No documentation was provided for the year 1983 with regard to business entertainment, business gifts, home office expense and Christmas cards.

Petitioners submitted into evidence a letter from Saul P. Steinberg, Chairman and Chief Executive Officer of Reliance Group Holdings, dated January 10, 1984, addressed to Mr. George E. Bello, which set forth the following policy statement with regard to the entertainment expenses of company employees:

> "The salaries of key executives have been set at levels intended to cover the costs of their entertaining subordinates and other company employees as part of their responsibility to maintain effective personal relationships. For this reason, it is the policy of the company not to reimburse its employees via expense accounts/reports for the cost of entertaining other Reliance Group employees or executives."

Petitioners alleged that the principal place of business of the Reliance Figueroa Associates partnership was in New York, thereby subjecting a nonresident partner's income and expenses to New York State tax despite the fact that the property owned by the partnership was located outside of New York State. In support of this position, petitioners submitted the initial United States Partnership Return of Income, Form 1065, of Reliance Figueroa Assoc., c/o Reliance Development Figueroa, Inc., Park Avenue Plaza, New York, New York 10055, and the New York partnership return filed for the initial calendar year beginning August 23, 1983 and ending December 31, 1983, for Reliance Figueroa Associates indicating the same address as that stated on the Federal partnership return. Petitioners also submitted the Schedule K-1 to Form 1065 indicating George E. Bello's share of income and expenses of Reliance Figueroa Associates for the year 1983.

Petitioners also submitted a letter, dated April 26, 1991, from Stewart J. Gerson of Reliance Development Group to the Tax Appeals Tribunal which set forth the following:

> "I am Vice-President and Controller of Reliance Development Group, Inc., an indirectly owned subsidiary of Reliance Group Holdings, Inc., where I have been employed since 1980.
>
> Reliance Development Group, Inc. is the parent company of Reliance Figueroa, Inc., which is the corporate general partner of Reliance Figueroa Associates. The other partners of Reliance Figueroa Associates consisted of Senior executives of Reliance Group Holdings, Inc.
>
> Reliance Figueroa Associates partnership was formed in 1983 to own and operate the Los Angeles Hilton Hotel. Since inception, Reliance Figueroa Associates was managed in our office in New York and the books and records of Reliance Figueroa Associates were prepared and maintained by my staff in New York.
>
> The management decisions, as well as the finance, accounting, legal, clerical and secretarial functions of Reliance Figueroa Associates were all performed in New York. Hilton Hotels Corporations managed the daily operations of the hotel under contract with Reliance Figueroa Associates."

Finally, petitioners submitted a fact sheet with regard to Reliance Figueroa Associates, but the origin and author of said facts were never disclosed.

As conceded by petitioners, if it is found that Reliance Figueroa Associates is a partnership whose losses are allowed against other New York State income, then the issue of an accelerated cost recovery system ("ACRS") depreciation modification will arise. Petitioners

submitted a separate computation for said ACRS depreciation modification on certain buildings and improvements, furniture and fixtures. Said modification was calculated to be $273,295.00. Mr. Bello's share of said modification was stated to be 11%, or $30,501.00.

For each of the oil and gas partnerships, i.e., B.W. 1980 Energy Ltd. Partners, B.W. 1981 Energy Ltd. Partners, B.W. 1982 Energy Ltd. Partners, and Okmulgee Ltd. Partners, petitioners submitted New York State partnership returns for the years 1982 and 1983, indicating the same address for each partnership for both years, namely, "in care of Reliance Group Holdings, Inc., Park Avenue Plaza, New York, New York 10055." The returns indicate that the principal business activity of each of the partnerships was "oil and gas" but do not indicate the location of the business assets, where management and administrative functions were performed or where the business of the partnerships was carried on.

Petitioners also submitted a two-page statement entitled "In the Matter of the Petition of George E. and Carol L. Bello, DTA #806543, Oil and Gas Partnership Issue" the origin and authors of which were not disclosed. Initially, the statement takes issue with Judge Corigliano's determination in the Matter of Michael J. Blake and Kathleen T. Blake (Administrative Law Judge determination, October 4, 1990), which found that petitioners in that case had not carried their burden of showing that there was a transactional nexus between New York and the oil and gas partnerships. Petitioners submitted with said statement a letter from Mr. Bello listing some Reliance Group Holdings employees who performed functions for the partnerships in the New York offices and the functions performed by those people; a letter from Philip Sherman, Senior Vice President of Reliance Group Holdings, Inc., describing his activities performed for the partnerships in Reliance Group Holdings' New York offices. Both of the above-referenced letters were dated January 25, 1991 and addressed to the Tax Appeals Tribunal with regard to the Blake matter which is now pending before that body. The names of the oil and gas partnerships in the Blake case were never disclosed in either letter and it is not clear whether or not they were the same partnerships involved in the instant matter. It is noted that the letter from Mr. Bello mentions Reliance Figueroa Associates specifically. Mr. Sherman's letter does

not indicate any names of either the oil and gas or real estate partnerships. Mr. Sherman did make the point in his letter that sometimes it was more efficient to have mail of some of the entities sent to a home address and included statements from a "Daily Income Fund, Inc." indicating mail to B.W. 1981 Energy Ltd. Partners sent to Philip S. Sherman at 70-25 Yellowstone Boulevard, New York, New York 11375.

Neither George E. nor Carol L. Bello testified at either hearing. Further, even though both parties were afforded ample opportunities to submit additional documentation after the second hearing on March 1, 1991, petitioners submitted only a letter, dated April 30, 1991, from Mr. Stewart Gerson, vice-president and controller of Reliance Development Group, Inc., with regard to Reliance Figueroa Associates and the Schedule K-1 of Mr. Bello with regard to that partnership.

The Division submitted the United States partnership returns for B.W. 1982 Energy Limited Partners, Okmulgee Limited Partners and Chatham Energy Partners. The address listed for the partnerships was 1300 South Main, Tulsa, Oklahoma.

Even though it was understood by the parties that the raison d'etre of the second hearing was the failure of the Blake case to reach a conclusion with regard to the oil and gas partnership issues, the Reliance Figueroa Associates issue and the Schedule C hanger business issue, neither party chose to exploit the opportunity to strengthen their cases except by the evidence referred to above.

CONCLUSIONS OF LAW

A. Before addressing any substantive issues with regard to the tax years 1982 and 1983, it must be determined whether or not the Division timely issued its Notice of Deficiency with regard to the tax year 1982.

Tax Law § 683(a) provides for limitations on assessment as follows:

> "Except as otherwise provided in this section, any tax under this article shall be assessed within three years after the return was filed...."

There are certain exceptions to this limitation listed in Tax Law § 683(c) but none appear to be present in the instant matter. There was some discussion with regard to whether the

amended returns filed by petitioners constituted reports of Federal changes but petitioners never disclosed any Federal changes for the years in issue or indicated on the amended returns that the changes thereon were in any way related to Federal changes.

Clearly, the Notice of Deficiency herein, issued on September 25, 1987, was beyond the agreed upon date of April 30, 1987, stated on the consent fixing the period of limitation upon assessment of personal income and unincorporated business taxes executed by petitioners and the Division on October 1 and October 2, 1986 respectively.

The Division argues that the three-year period of limitation on assessment should have begun on the date the amended New York State Nonresident Income Tax Return for the year 1982 was filed on September 19, 1985, giving it until September 19, 1988 to assess the deficiency. However, there is no provision in the Tax Law providing for a date from which the three-year limitation on assessment runs. In fact, Tax Law § 683 states that the tax shall be assessed within three years after "the return" was filed, not indicating whether it applied to the original or amended returns.

Tax Law § 607 provides, in pertinent part, as follows:

> "(a) General. Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required...."

The same provision is found in the regulations at 20 NYCRR 102.1.

Tax Law § 683(a) providing for the limitations on assessment is practically identical to Internal Revenue Code § 6501(a) which addresses itself to limitations on assessment and collection. Treasury Regulation § 301.6501(a)-1 contains a similar provision.

When analyzing State statutes modeled after Federal statutes, Federal cases may be looked to for guidance (Matter of Ilter Sener d/b/a Jimmy's Gas Station, Tax Appeals Tribunal, May 5, 1988, citing Matter of Levin V. Gallman, 42 NY2d 32, 396 NYS2d 623). Unlike State statutory, regulatory and case law, the Federal body of law has addressed the issue of periods of assessment where amended returns have been filed. It is well settled in the Federal cases that the date of filing of the original return and not that of filing the amended return, starts the period

of limitation (Northern Anthracite Coal Company v. Commr., 21 BTA 1116 [1931]).

In Zellerback Paper Co. v. Helvering (293 US 172), the Supreme Court found that a second return reporting an additional tax is an amendment or supplement to a return already on file and being effective by relation does not toll a limitation which has once begun to run (id. at 179). Further, the Court in Zellerback Paper Co. stated that perfect accuracy or completeness is not necessary to rescue a return from nullity, if it purports to be a return, is sworn to as such and evinces an honest and genuine endeavor to satisfy the law. This is true even if, at the time of the filing of the original return, omissions or inaccuracies are present to make the amendment necessary (id. at 179).

It is clear in the instant matter that petitioners' original return for the year 1982 was sufficiently complete to be considered a return evincing the honest and genuine endeavor to satisfy the law spoken of in the Zellerback Paper Co. case. Therefore, it is found that the amended return did not act to toll limitations, which began to run upon the filing of the original return on October 20, 1983 (subsequently extended by the consent until April 30, 1987) (cf., Orrock v. Commr., 43 TCM 1492 [where petitioners' original filings were not deemed to constitute returns because they did not contain sufficient information to enable the Internal Revenue Service to determine petitioners' correct income and tax liability for those years]).

Therefore, it is determined that the Division did not timely issue an assessment for the year 1982 and the deficiency with regard to the year 1982 is hereby cancelled.[2]

B. With the assessment for the year 1982 cancelled, the Division's disallowances for the year 1983 remain as the only issues to be determined herein.

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[2]In a somewhat different context, it has been held under the Federal law that when the statute of limitation is sought to be applied to bar the rights of the government, it must receive a strict construction in favor of the government, and that nothing is present in IRC § 6501(a) which would allow a fraudulent filer through subsequent repentant conduct to reinstate IRC § 6501(a)'s general three-year statute of limitation by filing an amended return. Specifically when Congress provided in section 6501(c)(1) for assessment at any time in the case of a false or fraudulent return, it plainly included by this language a false or fraudulent original return (Badaracco v. Commr., 464 US 386 [emphasis added]).

The first issue to be determined is that with regard to the Schedule C hanger business. The Division disallowed the expenses and cost of goods sold and added back $112,640.00 to gross income. Petitioners submitted only the February 8, 1985 letter from the Internal Revenue Service with regard to the year 1978 which stated with regard to the Schedule C business that:

> "because the transaction was not entered into for profit but was a transaction structured for tax avoidance, your deductions are denied."

Petitioners herein have not offered any other substantiation or testimony except to show that on their amended return for 1983 the Schedule C business income had been omitted. However, petitioners did not explain how they accounted for the $13,389.00 in business income, or how the Internal Revenue Service's determination for 1978 is applicable to the 1983 New York return given the Division's disallowance of the Schedule C deductions. Petitioners have not carried their burden of proof and the Division's addback is sustained (Tax Law § 689[e]).

C. With regard to the disallowed partnership losses and gains from the non-New York partnerships, i.e., B.W. 1980 Energy Ltd. Partners, B.W. 1981 Energy Ltd. Partners, B.W. 1982 Energy Ltd. Partners, Okmulgee Limited Partners and Reliance Figueroa Associates, petitioners argue that said income and losses should have been included in their return for the year 1983.

Tax Law former § 637(a)(1) provided that:

> "In determining New York adjusted gross income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with New York sources of such partner's distributive share of items of partnership income, gain, loss and deduction entering into his federal adjusted gross income, as such portion shall be determined under regulations of the tax commission consistent with applicable rules of section six hundred thirty-two."

Former section 632(b)(1) insofar as it is relevant here, states:

> "[I]tems of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:...a business, trade, profession, or occupation carried on in this state." (See also, 20 NYCRR 134.1[a].)

The Regulation at 20 NYCRR 131.4(a)(2) provides that:

> "A business, trade, profession, or occupation...is carried on within New York State by a nonresident when such nonresident occupies, has, maintains or operates desk space, an office, a shop, a store, a warehouse, a factory, an agency or other place where such nonresident's affairs are systematically and regularly carried on, notwithstanding the occasional consummation of isolated transactions without New

York State."

The Division's position was that petitioners failed to substantiate that the partnerships involved here carried on a business in New York State.

Petitioners rely heavily upon the case of Matter of Vogt v. Tully (53 NY2d 580, 444 NYS2d 441) wherein the court held that in determining whether an enterprise is carrying on a business in New York State, one must weigh whether the management of partnership assets located outside of New York State is passive or active. It is noted that in the Vogt case, a New York limited partnership, Endeavor Car Company, purchased, financed and leased railroad tank cars. All of the partnership's business activities were conducted in New York by one of the endeavor's two general partners at the offices of his employer. The Tax Commission found that this partner devoted approximately 30% of his time to the partnership activities; that the partnership's books and records were maintained in New York; that the partnership's business address was in New York; that clerical, administrative and other services were provided to the partnership by the partner's employer on a contractual basis; that the partnership had no other offices either inside or outside of New York. Based upon these factual findings, the State Tax Commission in that case found that the business of the partnership was not passive and that the business was "systematically and regularly carried on...with a fair measure of permanency and continuity" in New York (20 NYCRR 131.4[a][2]).

Although many allegations are contained in the instant record which purportedly indicate that this case is very close to the Vogt case, a closer examination reveals that petitioners have provided very little evidence of any of the essential points necessary to show that the income and deductions taken with regard to the partnerships listed were derived from or connected with New York sources. There was no sworn testimony submitted by anyone connected with the partnerships, only tax returns filed with New York State for B.W. 1980 Energy Ltd. Partners, B.W. 1981 Energy Limited Partners, B.W. 1982 Energy Limited Partners and Okmulgee Limited Partners, all in care of Reliance Group Holdings, Inc. of Park Avenue Plaza, New York, New York. It is noted that the Division submitted the United States partnership returns for

Okmulgee and B.W. 1982 Energy Limited Partners which indicate a Tulsa, Oklahoma address. Also submitted by petitioners was an account statement of the Daily Income Fund, Inc., indicating that B.W. 1981 Energy Ltd. Partners had an address in care of Philip S. Sherman of Yellowstone Boulevard, New York, New York. Petitioners also filed what can only be referred to as "fact sheets", blank sheets of paper with facts about the oil and gas partnerships and Reliance Figueroa Associates, the author and origin of which were not revealed and which were unsworn. Finally, following the second hearing with regard to this matter, petitioners filed a letter from a Stewart J. Gerson, vice-president and controller of Reliance Development Group, Inc., an indirectly-owned subsidiary of Reliance Group Holdings, Inc., alleging that the Reliance Figueroa Associates partnership was formed in 1983 to own and operate the Los Angeles Hilton Hotel and that it was managed in offices in New York where the books and records were prepared and maintained by Mr. Gerson's staff. Petitioners also submitted a Schedule K-1 issued by the partnership to Mr. Bello indicating his share of the loss in the partnership for the year 1983. The partnership indicates an address in c/o Reliance Development Figueroa, Inc., Park Avenue Plaza, New York, New York.

The items submitted by petitioners did not evidence a New York connection sufficient to carry their burden of proof. Therefore, it is determined that the Division properly disallowed said losses. Given this determination, the ACRS modification issue with regard to the Reliance Figueroa Associates partnership is moot.

D. As stated in Finding of Fact "9" above, petitioners conceded that the short dividend deduction they took in 1982 was properly disallowed and that a $10,160.00 short dividend deduction should have been allowed for the year 1983. The Division of Taxation agreed to this figure as a short dividend deduction for the year 1983 in its letter of May 18, 1990. Therefore, the Division is directed to make the appropriate modifications for 1983.

E. With regard to the issue of the interest expense claimed by petitioners with regard to their accounts at Solomon Brothers and Bankers Trust, it is noted that petitioners did submit account statements for the year 1983 and summary sheets of same. As stated in the facts above,

for the year 1983, the percentage of treasury note income to total income was expressed by petitioners as a percentage in their summary sheet at 63.7% which was multiplied by interest expense of $349,053.00. However, the Solomon Brothers statement for the period beginning December 1, 1983, indicates interest charged to the account in 1983 of $418,868.94. No explanation was given for the inconsistency and, as also stated in the facts, without further elaboration, the Salomon Brothers accounts statements were not intelligible and do not provide adequate substantiation of the interest deduction taken.

With regard to the Bankers Trust Company loans for the year 1983 petitioners submitted statements which were purportedly issued by Bankers Trust Company although bearing no notation thereon that Bankers Trust generated same. Although the statements contain loan numbers, dates, amounts outstanding, annual percentage rates, days and amounts accrued and also handwritten notations of amounts paid with regard to the particular receipts, without corroborating sworn testimony or other specific documentation, it is impossible to correlate the documentation provided with the deductions taken on the return for 1983. Therefore, petitioners have not carried their burden of proving that the Division improperly disallowed the deduction.

F. With regard to the issue of the deduction taken for business entertainment, business gifts, home office expense and Christmas cards for the year 1983, it is noted that petitioners did not substantiate any of these other expenses with documentation, as they had provided for the year 1982. Even though petitioners were afforded an opportunity after both hearings to submit further documentation, they chose not to do so. Coupled with the failure to provide sworn testimony, the deductions taken for these items must be denied.

G. The petition of George E. and Carol L. Bello is granted to the extent set forth in Conclusions of Law "A" and "D" above, but in all other respects, the petition is denied, and the Notice of Deficiency dated September 25, 1987, as so modified, is sustained together with such additional penalty and interest as may be lawfully due and owing.

DATED: Troy, New York

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ADMINISTRATIVE LAW JUDGE