L 9 (6-65)

Income Tax Determinations A-Z

BUREAU OF LAW

MEMORANDUM

Bourne, William G., Jr.

TO: Commissioners Murphy, Palestin & Macduff

FROM: Solomon Sies, Hearing Officer

SUBJECT: WILLIAM G. BOURNE, JR.

1959 Application for Revision or Refund of Personal Income Taxes under Article 16 of the Tax Law.

A hearing with reference to the above matter was scheduled before me at 80 Centre Street, New York, N.Y., on September 21, 1965. The taxpayer defaulted in appearance at said hearing.

The issue involved herein is whether the taxpayer, a non-resident, is entitled to a deduction of a share of partnership loss where the partnership income, if any, would be attributable to sources without the state of New York.

On May 15, 1957, a limited New York partnership was formed, known as Karnes County Associates, between William B. Tippy as general partner and others as limited partners engaged in the business of acquiring and developing gas, oil and mineral properties in Texas. The partnership purchased leases of mineral rights in Texas on a five-year lease basis. No oil wells were purchased. The partnership paid delay rentals to the owners of the land for not drilling. The activities of the partnership were conducted outside the State of New York although it used a New York address. The income of the partnership derived from the development of gas and oil properties in Texas would have been attributable to sources outside the State of New York and not taxable to non-residents.

On May 15, 1957 the taxpayer entered into an agreement with William B. Tippy whereby he (the taxpayer) agreed to and did deliver to Tippy the sum of $2,000.00 to be used as a portion of the capital contributions of Tippy to the partnership of Karnes County Associates as general partner. Tippy agreed to pay and distribute to the taxpayer a percentage of the gross income which Tippy would receive from the partnership by way of dividends, profits or otherwise. For the fiscal year ending May 31, 1959, the partnership suffered a net loss in the sum of $20,180.00 of which $9,697.60 was attributable to William B. Tippy. The taxpayer's share of the loss on his investment under the terms of the trust agreement amounted to $936.96.

I am of the opinion that the taxpayer, as a non-resident, was not entitled to deduct a portion of the operating loss attributable to sources outside New York State in accordance with subdivision 11, Section 360 of the Tax Law.

RE: WILLIAM G. BOURNE, JR.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

SOLOMON SIES
Hearing Officer

OCT 28 1965

/s/ MARTIN SCHAPIRO
Approved

/s/ E. H. BEST
Approved

SS/tc

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED &BLURRED

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

WILLIAM G. BOURNE, JR.

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR 1959.

The taxpayer herein, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1959 and a notice of hearing dated August 17, 1965, having been mailed on said date to the taxpayer scheduling a hearing at the New York City office of the State Tax Commission at 80 Centre Street, New York, N.Y., for September 21, 1965, at 3:30 P. M. before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, and the taxpayer having defaulted in appearance thereat, said default having been duly noted and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That at all of the times hereinafter mentioned, the taxpayer William G. Bourne, Jr. was and still is a resident of the state of Connecticut; that the taxpayer filed a New York State income tax non-resident return for the year 1959 and reported net income in the sum of $21,485.23; that on August 29, 1960, the taxpayer filed an application for revision or refund in which he claimed that he had neglected to include in his 1959 non-resident income tax return his share amounting to $536.96 of the net operating loss for the fiscal year ending May 31, 1959 of Karnes County Associates, a New York partnership engaged in the business of developing oil and gas properties in the state of Texas and requested a refund in the sum of $53.69; that on February 10, 1961, the Department of Taxation and Finance denied the taxpayer's application for refund for the

year 1959 on the ground that a non-resident taxpayer is not entitled to a deduction of partnership loss whose activities were conducted entirely outside New York State.

(2) That on May 15, 1957, a limited partnership was formed, known as Karnes County Associates between William B. Tippy, as general partner and others as limited partners, engaged in the business of acquiring and developing gas, oil and mineral properties in Texas; that the partnership purchased leases to mineral rights in land located in Texas for a period of five years; that the partnership paid delay rentals to the owners of the land for not drilling; that the partnership did not purchase any oil wells; that the taxpayer was not a member of this partnership.

(3) That on May 15, 1957, the taxpayer entered into a trust agreement with William B. Tippy as trustee whereby the taxpayer agreed to and did deliver to said trustee the sum of $2,000.00 to be used as a portion of the capital contribution of Tippy to the partnership of Karnes County Associates as general partner; that the trustee agreed to pay and distribute to the taxpayer, as donor, 5.55% of the gross income which the trustee would receive from the partnership by way of dividends, profits or otherwise; that for the fiscal year ending May 31, 1959, the partnership suffered a net loss in the sum of $20,130.00 of which 48% or $9,657.60 was attributable to William B. Tippy; that the taxpayer's share of the loss on his investment under the trust agreement amounted to $536.96.

(4) That the activities of the partnership of Karnes County Associates in the development of oil, gas and mineral rights in the state of Texas were conducted outside the state of New York; that income or loss derived from the partnership was attributable to sources without the state of New York; that the taxpayer's portion of net operating loss derived therefrom was not attributable to sources within the state of New York.

Based upon the foregoing findings, the State Tax Commission hereby

DETERMINED:

(A) That the taxpayer as a non-resident was not entitled to deduct a portion of the operating loss attributable to him from sources without the state of New York in accordance with subdivision 11, Section 360 of the Tax Law.

(B) That, accordingly, there can be no recomputation, revision or refund of the taxes due for the year 1959 and that the taxpayer's application for revision or refund with respect thereto be and the same is hereby denied.

DATED: Albany, New York, on the 29th day of December, 1965.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ IRA J. PALESTIN
Commissioner

Commissioner