

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George R. & Marion G. Vogt :
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 1970. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

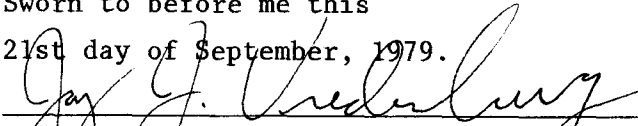

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Decision by certified mail upon George R. & Marion G. Vogt, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George R. & Marion G. Vogt
31 Mohawk Rd.
Short Hills, NJ 07078

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
21st day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George R. & Marion G. Vogt :

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for Redetermination of a Deficiency or a Revision :
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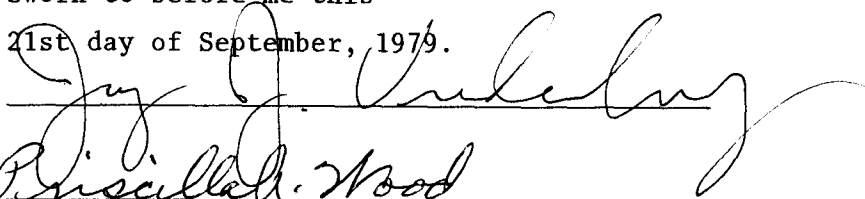

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Decision by certified mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs
Hancock, Estabrook, Ryan, Shove & Hust
1400 Mony Plaza
Syracuse, NY 13202

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
21st day of September, 1979.



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

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

George R. & Marion G. Vogt
31 Mohawk Rd.
Short Hills, NJ 07078

Dear Mr. & Mrs. Vogt:

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'John J. Sollecito'.

cc: Petitioner's Representative
Hancock, Estabrook, Ryan, Shove & Hust
1400 Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
GEORGE R. VOGT and MARION G. VOGT : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the :
Year 1970. :

Petitioners, George R. Vogt and Marion G. Vogt, 31 Mohawk Road, Short Hills, New Jersey 07078, 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 1970 (File No. 00511).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 20, 1977 at 9:15 A.M. Petitioners appeared by Hancock, Estabrook, Ryan, Shove and Hust, Esqs. (Joseph H. Murphy, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether nonresident petitioners were entitled to deduct losses sustained by petitioner George R. Vogt during 1970, when he was a limited partner in Endeavor Car Company.

FINDINGS OF FACT

1. Petitioners, George R. and Marion G. Vogt, timely filed a joint New York State nonresident personal income tax return for 1970, on which they reduced their New York State income by losses attributable to Mr. Vogt's limited partnership interest in Endeavor Car Company ("Endeavor").

2. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, George R. Vogt and Marion G. Vogt, adjusting their taxable income for 1970 and imposing additional personal income tax for said year. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued against petitioners on April 12, 1974 asserting personal income tax of \$4,423.30, plus interest of \$494.42, for a total of \$4,917.72.

3. Endeavor was a limited partnership organized in 1968, which partnership consisted of two general partners (Mr. Charles Lee, Jr. and Staghound Corporation) and eighteen limited partners, one of whom was Mr. Vogt. The partnership return filed by Endeavor for 1970 had a statement attached which read "[t]he property owned by this partnership is located and operated outside the State of New York." The statement attached for 1969 (which year is not at issue) had a similar statement, plus the statement that "no part of the net operating loss of the partnership is derived from or connected with New York State sources, and therefore, not allocable to nonresident partners." The distribution schedule which was attached to the partnership return of Endeavor for 1969, 1970 and 1971 showed a deficit balance in petitioner George R. Vogt's capital account.

4. Pittsburgh Plate Glass Industries, Inc. ("PPG") was the owner of a number of used railroad tank cars. In order to raise cash for expansion programs, it sold said cars to Endeavor which, simultaneously, leased them back to PPG under a net lease arrangement. Under said arrangement, PPG assumed liability, to indemnify Endeavor against all obligations and claims relating to or arising out of the operation of the equipment. Thereafter, when new cars were acquired, the ordering was done by PPG. Endeavor reviewed PPG's purchase order and agreed to purchase those cars, with the net lease agreement

made either before or after the purchase. Despite the net lease agreement, it was necessary for Endeavor to carry on its activities in order that member partners realize a profit on their investment.

5. The bulk of Endeavor's activities were conducted by Mr. Charles Lee, Jr., one of the two general partners, from the offices of First Boston Corporation at 20 Exchange Place, New York, New York. Mr. Lee, a vice-president of First Boston Corporation, devoted approximately 30% of his time to the business of Endeavor. Endeavor's books of account, ledgers, files and other records were kept at this office. Mail addressed to Endeavor was either delivered to this office or to its statutory address at 10 Garden Place, Brooklyn, New York (Mr. Lee's home). Mr. Lee's activities consisted of arranging for temporary and long-term financing, negotiating lease agreements, issuing capital calls on the partners, conducting correspondence, providing facilities and personnel on a contractual basis, and supervising the general activities of Endeavor.

6. Endeavor had no employees as such, nor did it specifically pay for the space which it occupied on the premises of the First Boston Corporation at 20 Exchange Place, New York, New York. It had no other offices either inside or outside New York State. Endeavor utilized the services of employees of First Boston Corporation and also relied on said firm for other services, which services and personnel were provided for on a contractual basis under a compensatory arrangement between Endeavor and First Boston.

CONCLUSIONS OF LAW

A. That the activities of the partnership, Endeavor Car Company, were passive in nature and did not have the frequency, continuity, and regularity of activities so as to constitute a regular business activity, within the meaning and intent of section 703 of the Tax Law and 20 NYCRR 203.1(a). As a result, the partnership was not engaged in a business, trade, or profession in

New York State, but rather had an investment in railroad cars located outside New York State; therefore, the distributive share of loss received by petitioner George R. Vogt from Endeavor Car Company did not constitute a loss derived from or connected with New York State sources, within the meaning and intent of sections 632(b)(1)(A), 632(b)(1)(B) and 637(a)(1) of the Tax Law, and 20 NYCRR 131.4(a).

B. That Treasury Regulation §1.704-1(d) limits the amount of partnership loss which may be allowed to a partner, to the amount of the adjusted basis of his interest in the partnership at the end of the partnership's taxable year, wherein the loss occurred; moreover, petitioner George R. Vogt would not have been allowed to claim a loss had said loss been derived from, and/or connected with New York sources.

C. That the petition of George R. Vogt and Marion G. Vogt is denied and the Notice of Deficiency dated April 12, 1974 is sustained, together with such additional interest as may be lawfully owing.

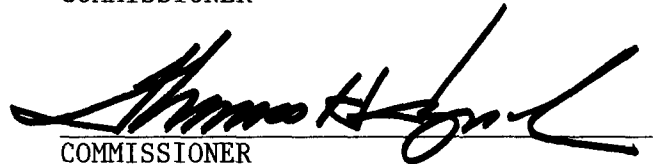
DATED: Albany, New York

SEP 21 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE

TAX APPEALS BUREAU

TO *Mr. Paul Colurn.*

Remailed on 9-26-79

J.J. Vredenburg.

M-75 (5/76)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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AFFIDAVIT OF MAILING

George R. VOGT and Marion VOGT
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year ~~(s) or Period(s)~~ 1970:

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that
~~she~~^{he} is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26 day of September, 1979, ~~she~~ served the within
Decision by (certified) mail upon Peat, Marwick
and Mitchell (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Peat, Marwick & Mitchell
111 Washington Avenue
Albany, New York

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

26th day of September, 1979.

Victoria Gary

Jay Vredenburg