

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
F. Donald Arrowsmith :  
and Josephine P. Arrowsmith : 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 1960 - 1971. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon F. Donald Arrowsmith, and Josephine P. Arrowsmith, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

F. Donald Arrowsmith  
and Josephine P. Arrowsmith  
1 Bankers Trust, P.O. Box 1297  
Church Street Station  
New York, NY

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  
14th day of November, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
F. Donald Arrowsmith :  
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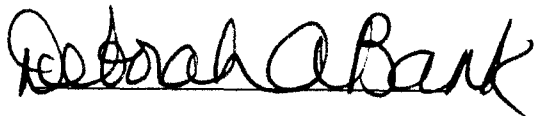
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by certified mail upon E. E. Finucan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

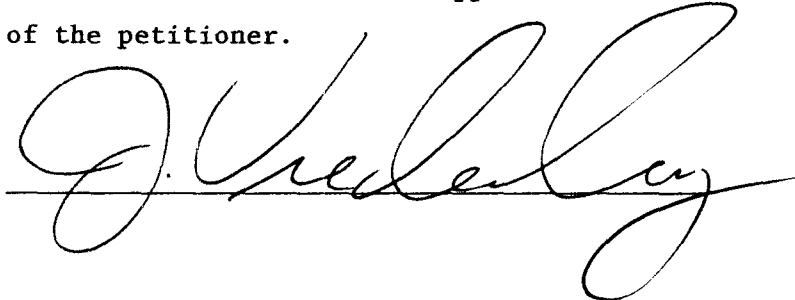
Mr. E. E. Finucan  
Finucan & Greenwood  
10 E. 40th St.  
New York, NY 10016

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  
14th day of November, 1980.





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

November 14, 1980

F. Donald Arrowsmith  
and Josephine P. Arrowsmith  
1 Bankers Trust, P.O. Box 1297  
Church Street Station  
New York, NY

Dear Mr. & Mrs. Arrowsmith:

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  
E. E. Finucan  
Finucan & Greenwood  
10 E. 40th St.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
F. DONALD ARROWSMITH	:	
and	:	DECISION
JOSEPHINE P. ARROWSMITH	:	
for Redetermination of Deficiencies or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1960 through 1971.	:	

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Petitioners, F. Donald Arrowsmith and Josephine P. Arrowsmith, 1 Bankers Trust, P.O.B. 1297, Church Street Station, New York, New York, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1960 through 1971 (File No. 01777).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1975 at 1:20 P.M. and continued on August 5, 1976 at 9:15 A.M. The hearing was continued to conclusion before Edward L. Johnson, Hearing Officer, on June 24, 1977 at 12:40 P.M. Petitioners appeared by E. E. Finucan, CPA. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner F. Donald Arrowsmith, a member partner of Van Alstyne, Noel & Co., properly allocated his distributive share of partnership income.

II. Whether petitioner F. Donald Arrowsmith was required to add to total income his share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co. for 1966 through 1970.

III. Whether petitioner F. Donald Arrowsmith was required to report his distributive share of partnership income/loss from Mawdsley, Sellas & Co., a Missouri partnership, for 1968 through 1971.

IV. Whether petitioner F. Donald Arrowsmith was entitled to deduct losses incurred from a joint venture which was engaged in oil and gas explorations during 1969 and 1970.

#### FINDINGS OF FACT

1. Petitioners, F. Donald Arrowsmith and Josephine P. Arrowsmith, filed joint New York State income tax nonresident returns for 1960 through 1971, wherein petitioner F. Donald Arrowsmith reported his distributive share of partnership income received from Van Alstyne, Noel & Co.

2. Petitioner F. Donald Arrowsmith also was a member partner of Russell, McElnea & Co. and Mawdsley, Sellas & Co. during 1968 through 1971, and a member partner of three oil lease joint ventures in 1969. His share of partnership loss from Russell, McElnea & Co. is not at issue.

3. Petitioner F. Donald Arrowsmith signed consents fixing period of limitation upon assessment of personal income and unincorporated business taxes, which consents extended the period for assessment of personal income tax for 1961 through 1969, until April 15, 1974.

4. On November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioner F. Donald Arrowsmith for 1960 and 1961, asserting personal income tax of \$3,243.07, plus interest of \$2,440.13, for a total sum of \$5,683.20. On the same date, another Notice of Deficiency was issued to both petitioners for 1962 through 1971, asserting personal income tax of \$41,126.00, penalty, pursuant to section 685(c) of the Tax Law, for 1967 and 1969 in the total amount of \$166.00, and interest of \$14,552.45, for a total sum of \$55,844.45. The two notices of deficiency were issued, in part, as a

result of a field audit of the partnership Van Alstyne, Noel & Co., wherein adjustments were made to the partnership allocation percentage which resulted in personal income taxes due from nonresident partners.

5. Mawdsley, Sellas & Co. was a partnership formed in the State of Missouri. It had two functions: the first was the financing of cattle and included such activities as investing money, borrowing money, and making arrangements for various banking relationships in order to get enough money to buy the cattle; the second function was the actual cattle operation which included the purchasing of the animals, the selection of the feed yards in which they were kept, and the checking of the animals until they were ready for sale. Petitioners' representative stated that feed yards were located all over the Southwest and West, including California, Nevada, Louisiana, Texas and Oklahoma. Van Alstyne, Noel & Co. provided the collateral on loans made to Mawdsley, Sellas & Co. Van Alstyne, Noel & Co. was not a member partner in Mawdsley, Sellas & Co., nor did it carry said firm on its books as an investment.

Petitioner F. Donald Arrowsmith and the other partners of Van Alstyne, Noel & Co. became joint venturers with Nyvatex, a joint venture involved in oil and gas exploration. The joint venture had no place of business in New York State during 1969 and 1970. The partners of Van Alstyne, Noel & Co. and their wives owned a large amount of stock in Nyvatex Oil Co., a public company listed in over-the-counter stocks. The explorations took place in the State of Montana and various other places, but not in New York State. In order to drill for oil, Nyvatex would seek out financing in the Wall Street financial community of New York City, excluding Van Alstyne, Noel & Co., and also from other companies. The partners of Van Alstyne, Noel & Co. became joint venturers

as individuals and not as partners. Petitioners contended that Nyvatex also was engaged in a number of financial ventures in New York City, but submitted no evidence to support their contention.

6. Petitioners filed Forms IT-115, "Notice of Change in Taxable Income by United States Treasury Department Pursuant to Section 659 of the New York State Tax Law", for 1960 through 1962 and for 1964, 1966 and 1967.

7. Petitioners filed a claim for refund on Form IT-113X based on a carryback of a net operating loss from 1963. Said refund was issued on September 8, 1964. The carryback was later disallowed as a result of an audit of the partnership Van Alstyne, Noel & Co. which resulted in additional New York income for 1961 through 1965 and for 1968.

8. The 1966 and 1967 field audit adjustments to New York taxable income were based on Federal adjustments, and petitioner F. Donald Arrowsmith's share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co.

The field audit adjustments for 1968 were based on the disallowance of petitioner F. Donald Arrowsmith's share of partnership loss from Mawdsley, Sellas & Co., a Missouri partnership; a capital gain adjustment; and his share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co.

The field audit adjustments for 1969 and 1970 were based on partnership adjustments relating to Mawdsley, Sellas & Co., losses from oil lease joint ventures, adjustments to sale of gas and oil properties and oil and gas revenue, and the disallowance of capital loss carryovers.

CONCLUSIONS OF LAW

A. That the Audit Division is hereby directed to recompute F. Donald Arrowsmith's proportionate share of partnership income from Van Alstyne, Noel & Co. in a manner consistent with the State Tax Commission decision in the Matter of the Petition of Van Alstyne, Noel & Co., signed on this date.

B. That the New York City unincorporated business tax is an income tax for which deduction shall be allowed under section 706(4) of Article 23 of the Tax Law, which refers to the computation of New York State unincorporated business income tax. For purposes of personal income tax, Article 22 is applicable, which article requires a modification increasing total income by adding back income taxes imposed by this or any other state or taxing jurisdiction; therefore, New York City unincorporated business tax was not deductible in computing New York State adjusted gross income under section 632(a)(2) of the Tax Law.

C. That although financial arrangements were made on behalf of Mawdsley, Sellas & Co. at the offices of Van Alstyne, Noel & Co. in New York City, such location did not constitute a place of business of the Missouri partnership; that even though the interests of the partners in Mawdsley, Sellas & Co. were in the same percentages as their proportionate interests in Van Alstyne, Noel & Co., the Missouri partnership did not maintain in this State a place of business where its business affairs were systemically and regularly carried on. Therefore, petitioner F. Donald Arrowsmith's share of partnership loss from Mawdsley, Sellas & Co. is not includable in determining New York adjusted gross income under section 637(a)(1) of the Tax Law and 20 NYCRR 134.1.

D. That petitioners are not entitled to deduct losses from oil lease joint ventures since said losses were incurred as a result of oil drilling operations, which were carried on outside New York State, and which were individually financed by petitioner F. Donald Arrowsmith.

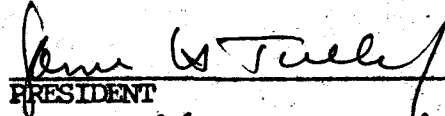


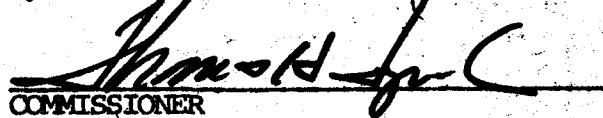
E. That the Audit Division is directed to modify the notices of deficiency issued on November 26, 1973 to the extent shown in Conclusion of Law "A", supra; and that, except as so granted, the petitions are in all other respects denied.

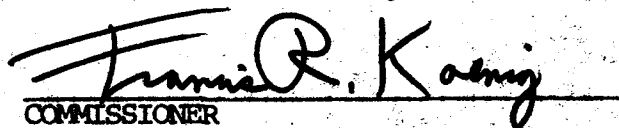
DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER