

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Richard D. Esbenshade :  
and Nancy A. Esbenshade : 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 1971-1975. :

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State of New York  
County of Albany

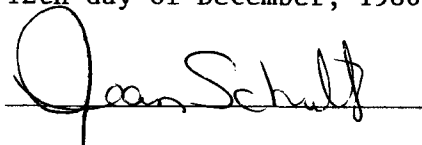
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Richard D. Esbenshade, and Nancy A. Esbenshade, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

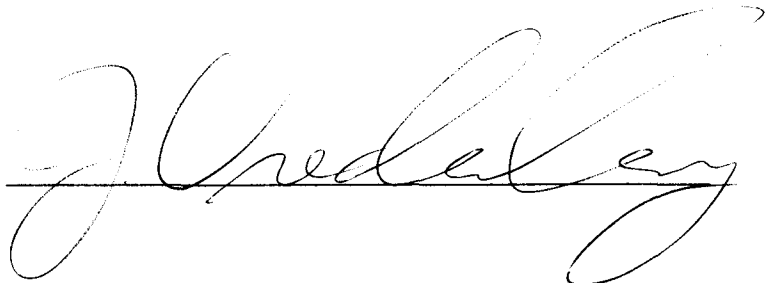
Richard D. Esbenshade  
and Nancy A. Esbenshade  
718 South Arroyo Blvd.  
Pasadena, CA 91105

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  
12th day of December, 1980.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Richard D. Esbenshade :  
and Nancy A. Esbenshade : AFFIDAVIT OF MAILING  
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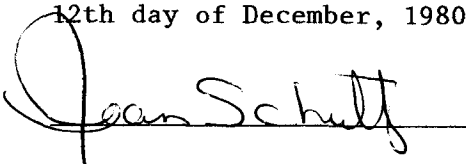
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon T. Gorman Reilly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

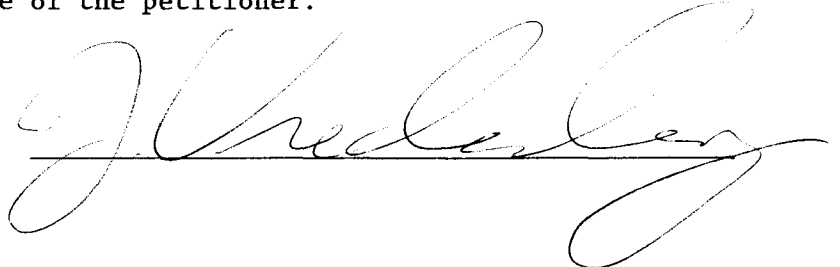
Mr. T. Gorman Reilly  
Hahn, Hessen, Margolis & Ryan  
350 Fifth Ave.  
New York, NY 10118

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  
12th day of December, 1980.

Jean Schutt

Jay Vredenburg

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

December 12, 1980

Richard D. Esbenshade  
and Nancy A. Esbenshade  
718 South Arroyo Blvd.  
Pasadena, CA 91105

Dear Mr. & Mrs. Esbenshade:

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  
T. Gorman Reilly  
Hahn, Hessen, Margolis & Ryan  
350 Fifth Ave.  
New York, NY 10118  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
RICHARD D. ESBENSHADE and NANCY A. ESBENSHADE  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article  
22 of the Tax Law for the Years 1971 through  
1975.

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DECISION

Petitioners, Richard D. Esbenshade and Nancy A. Esbenshade, 718 South Arroyo Boulevard, Pasadena, California 91105, 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 1971 through 1975 (File No. 19668).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 20, 1979 at 1:15 P.M. Petitioners appeared by Hahn, Hessen, Margolis & Ryan, Esqs., (T. Gorman Reilly, Esq., of counsel) and by Main Lafrentz & Co. (Jay L. Dengrove, CPA). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner Nancy A. Esbenshade, a nonresident partner of Abrahams Brothers, is entitled to allocate part of her distributive share of partnership income to sources outside New York State.

FINDINGS OF FACT

1. Petitioners, Richard D. Esbenshade and Nancy A. Esbenshade, timely filed joint New York State nonresident income tax returns for the years 1971 through 1975.

2. Thereafter, petitioners duly executed consents extending the period of limitations for assessment for the years 1971 and 1972 until April 15, 1977.

3. On April 14, 1977, the Audit Division issued a Statement of Audit Changes against petitioners Richard D. Esbenshade and Nancy A. Esbenshade for the tax years 1971 through 1975, asserting that additional taxes were due for each of said years for the reason stated in said Statement of Audit Changes that "Allocation of partnership income and New York State modification to gross income is disallowed since the allocation of Abrahams Brothers' income was not allowed."

In addition said Statement of Audit Changes also stated that "1973 -1974 exemptions must be allocated according to the limitation percentage when arriving at NYS Taxable Incomes."

Accordingly, a Notice of Deficiency was issued against petitioners Richard D. Esbenshade and Nancy A. Esbenshade on April 14, 1977 imposing additional personal income tax for the tax years 1971 through 1975 amounting in the aggregate to \$1,617.95, together with penalty pursuant to section 685(c) of the Tax Law in the sum of \$186.63 and interest of \$299.28, for a total deficiency of \$2,103.86.

4. Petitioners Richard D. Esbenshade and Nancy A. Esbenshade timely filed a petition for redetermination of said deficiency or for refund of tax paid for the taxable years 1971 through 1975.

#### CONCLUSIONS OF LAW

A. That petitioner Nancy A. Esbenshade's proportionate share of partnership income derived from New York State sources for the years 1971 through 1975 from the partnership Abrahams Brothers (as determined in the State Tax Commission decision in the Matter of the Petition of Abrahams Brothers, signed on this

date) was correctly reported by petitioners on their respective returns.

B. That the penalty asserted pursuant to section 685(c) was properly imposed and, therefore, sustained.

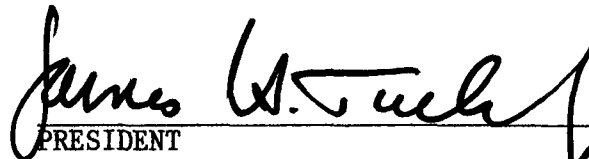
C. That the application of the limitation percentage to exemptions for the years 1973 and 1974 was proper pursuant to section 636(a) of the Tax Law, however, said limitation percentage must be recomputed in light of Conclusion of Law "A", supra.

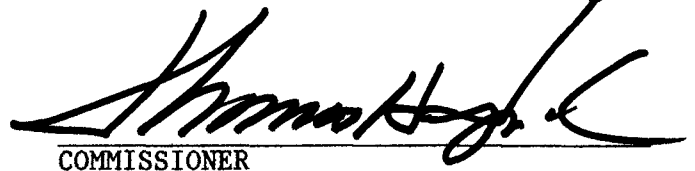
D. That the petition of Richard D. Esbenshade and Nancy A. Esbenshade is granted to the extent indicated in Conclusions of Law "A" and "C", supra, and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 12 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER