

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Irving I. & Anne Kloner :
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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Irving I. & Anne Kloner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving I. & Anne Kloner
2484 Prairie Ave.
Miami Beach, FL 33140

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Irving I. & Anne Kloner :
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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Seymour R. Shapiro 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. Seymour R. Shapiro
433 Doughty Blvd.
Inwood, NY 11696

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Irving I. & Anne Kloner
2484 Prairie Ave.
Miami Beach, FL 33140

Dear Mr. & Mrs. Kloner:

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
Seymour R. Shapiro
433 Doughty Blvd.
Inwood, NY 11696
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|-----------------------------------------|---|----------|
| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| IRVING I. KLONER and ANNE KLONER | : | 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, Irving I. Kloner and Anne Kloner, 2484 Prairie Avenue, Miami Beach, Florida 33140, 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. 13868).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1978 at 12:00 Noon. The petitioners appeared by Seymour R. Shapiro, CPA. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether petitioners were required to accrue, to that portion of the year 1970 in which they were residents of New York State, capital gain income receivable after petitioners changed their residence from New York to Florida.

II. If so, whether petitioners may offset such income by losses anticipated for subsequent years.

FINDINGS OF FACT

1. Petitioners, Irving I. Kloner and Anne Kloner, timely filed a joint New York State Income Tax Resident Return for 1970 on which they stated that they were residents of New York State from January 1, 1970 to July, 1970.

2. On May 21, 1973, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Audit Changes in the sum of \$3,217.05, plus interest, for the tax year 1970, against the petitioners. This was done on the grounds that where a change of residence is involved, all income accruable to the period of residency, regardless of the method of accounting, must be included in the resident return; and also that deductions, exemptions and statutory credit must be prorated between resident and nonresident portions of the year.

3. The accruable income was income due on an installment basis over a period of years; the petitioners having taken back purchase money mortgages on the sale of two parcels of real property. The two parcels of real property were 1613 East New York Avenue and, their former residence, 1329 51st Street; both in Brooklyn, New York.

4. The petitioners also owned two other parcels of real property, both of which were located in the Bronx, New York. One parcel was located at 931 Avenue St. John and from the record herein, the petitioners' representative described the other parcel as "the Willis Avenue property". There was no contention by the Income Tax Bureau that these two parcels generated any income during 1970. Likewise, the petitioners' representative did not submit evidence of any losses, although he raised the possibility that these two parcels generated a loss.

5. The petitioners objected to declaring all of their accruable income on their 1970 return for the following reasons:

- (a) that they were being taxed on profits that they may or may not receive.
- (b) that they were being precluded from declaring any future possible losses subsequent to 1970 against income that they had already paid taxes on.

6. The petitioners did not file a surety bond or other security acceptable to the Tax Commission in an amount not less than the amount of additional income tax which would be payable if no such bond or security were filed.

CONCLUSIONS OF LAW

A. That section 654(c) of the Tax Law provides, in effect, that regardless of his method of accounting, where a taxpayer changes his status from resident to nonresident, any item of income, gain, loss or deduction accruable prior to the change of residence must be included in his gross New York income unless a bond or other security has been filed with the State Tax Commission.

B. That the Tax Law does not contain any provision permitting a taxpayer to adjust his income for one year with losses anticipated in subsequent years.

C. That since petitioners failed to file a surety bond or other acceptable security with the Tax Commission, the gain on the installment sale was accruable to their period of residency.


D. That the petition of Irving I. Kloner and Anne Kloner is denied and the Notice of Deficiency dated May 21, 1973 is sustained.

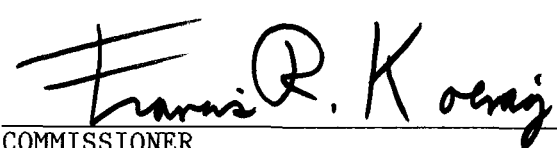
DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER