

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Roland Myles :

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 Year 1972. :

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 15th day of February, 1980, he served the within notice of Decision by certified mail upon Roland Myles, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Roland Myles

30 Franklin Pl.

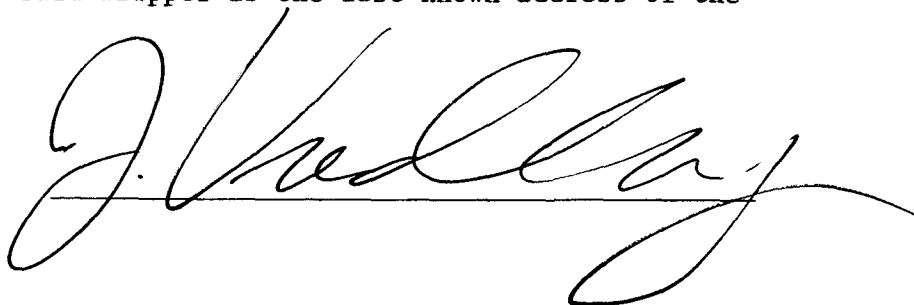
Mont Clair, NJ 07042

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  
15th day of February, 1980.

Joanne Knapp



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

February 15, 1980

Roland Myles  
30 Franklin Pl.  
Mont Clair, NJ 07042

Dear Mr. Myles:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :

of :

RONALD MYLES :

DECISION

for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article  
22 of the Tax Law for the Year 1972. :

---

Petitioner, Ronald Myles, 30 Franklin Place, Mont Clair, New Jersey, 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 1972 (File No. 13332).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 20, 1979 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

#### ISSUE

Whether petitioner, Ronald Myles, sustained a loss from a joint venture.

#### FINDINGS OF FACT

1. Petitioner, Ronald Myles, timely filed a New York State Income Tax Resident Return for 1972. On said return he claimed a loss from a joint venture in the amount of \$4,821.00.

2. On March 29, 1974, the Income Tax Bureau issued a Statement of Audit Changes, wherein, in addition to uncontested adjustments to contributions and miscellaneous deductions, the Bureau disallowed a joint venture loss in it's entirety, on the basis that said loss was not substantiated, and that petitioner has "not established that a joint venture existed in fact and in law". Accordingly, a Notice of Deficiency was issued against petitioner on July 29, 1974, asserting

additional personal income tax of \$411.10, plus interest of \$39.70, for a total due of \$450.80.

3. Petitioner, Ronald Myles, contended that in January, 1972 he entered into an agreement whereby he, and two other persons, contributed capital to Mr. Harvey Siamon, the proprietor of Heirob Bonsai Nursery, Livingston Manor, New York, for the purpose of purchasing, preparing and ultimately selling bonsai trees at two flower shows held in March, 1972.

4. Petitioner contended that he contributed cash to the venture in the amount of \$4,150.00. He computed the claimed loss by adding unreimbursed business expenses of \$1,171.00 to his cash outlay, then reducing the total by \$500.00, which he purports was cash returned to him from the flower shows.

5. Petitioner contended that the joint venture was dissolved during 1972; that neither Federal nor State income tax returns were filed for the joint venture.

6. No written agreement was entered into at the inception of the alleged venture.

7. Petitioner kept no formal records of the joint venture's business transactions; nor was documentary evidence submitted to substantiate purchases, receipts or expenditures of the alleged joint venture.

#### CONCLUSIONS OF LAW

A. That petitioner, Ronald Myles, did not comply with the record keeping requirements provided under 20 NYCRR 152.1, which states, in part, that:

"Every person subject to tax or liable for the collection thereof, and any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits and other matters required to be shown by such persons in any return of such tax or information."

B. That petitioner, Ronald Myles, has not met the burden of proof required under section 689(e) of the Tax Law to show that a loss was sustained in a joint venture.

C. That the petition of Ronald Myles is denied and that the Notice of Deficiency dated July 29, 1974 is sustained together with any additional interest lawfully owing.

DATED: Albany, New York

FEB 15 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER