

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William H. & Jane E. McElnea :
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 - 1969. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon William H. & Jane E. McElnea, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

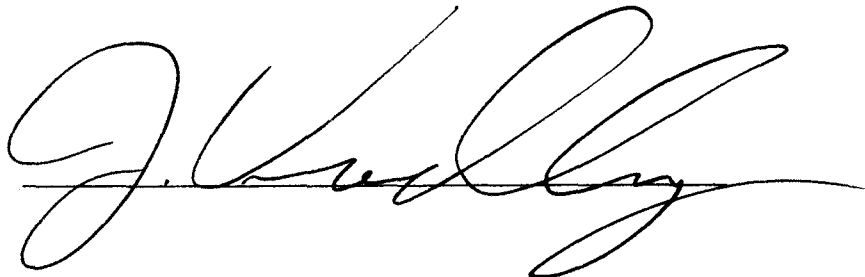
William H. & Jane E. McElnea
c/o Van Alstyne, Noel & Co.
120 Broadway
New York, NY 10005

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



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William H. & Jane E. McElnea :
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 - 1969. :

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 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:

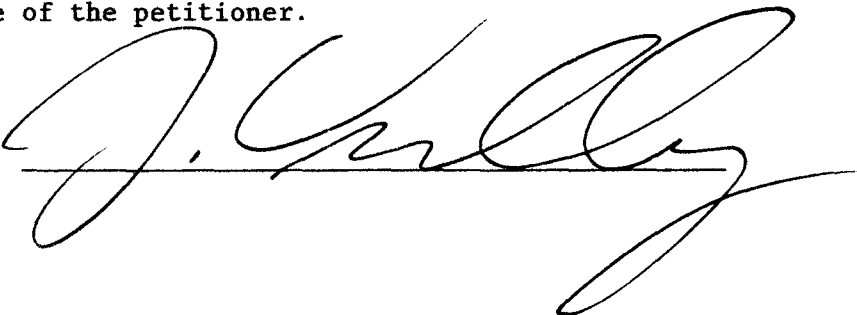
Mr. E. E. Finucan
Finucan & Greenwood
10 E. 40th St.
New York, NY 10016

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.

Antonia A. Bank



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

November 14, 1980

William H. & Jane E. McElnea
c/o Van Alstyne, Noel & Co.
120 Broadway
New York, NY 10005

Dear Mr. & Mrs. McElnea:

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

In the Matter of the Petition :
of :
WILLIAM H. McELNEA, JR. :
and : DECISION
JANE E. McELNEA :
for Redetermination of Deficiencies or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1960 through 1966. :

Petitioners, William H. McElnea, Jr. and Jane E. McElnea, c/o Van Alstyne, Noel & Co., 120 Broadway, New York, New York 10005, 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 1966 (File No. 01771).

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 William H. McElnea, Jr., a member partner of Van Alstyne, Noel & Co., properly allocated his distributive share of partnership income.

II. Whether petitioners were required to add to total income petitioner William H. McElnea, Jr.'s share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co. for 1966.

FINDINGS OF FACT

1. Petitioners, William H. McElnea, Jr. and Jane E. McElnea, filed New York State income tax nonresident returns for 1960 through 1966, wherein petitioner William H. McElnea, Jr. reported his distributive share of partnership income from Van Alstyne, Noel & Co.

2. Petitioner William H. McElnea, Jr. 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.

3. On November 26, 1973, the Income Tax Bureau issued two notices of deficiency; the first notice was for 1960 and 1966 and asserted personal income tax of \$6,442.80, plus interest of \$3,512.95, for a total sum of \$9,955.75. Said notice was issued on the ground that a net operating loss for 1963, which was previously allowed as a carryback to 1960, was disallowed as a result of an increase in partnership income due to a New York audit of the partnership Van Alstyne, Noel & Co. The adjustment for 1966 was due to a Federal audit and to petitioner William H. McElnea, Jr.'s failure 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. The second notice of deficiency was for 1961 through 1965 and asserted personal income tax of \$20,566.00, plus interest of \$11,285.21, for a total sum of \$31,851.21. Said notice was issued as a result of a New York audit of the partnership Van Alstyne, Noel & Co. for 1961 through 1965 and a Federal audit for 1961, 1962 and 1965.

CONCLUSIONS OF LAW

A. That the Audit Division is hereby directed to recompute William H. McElnea, Jr.'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.

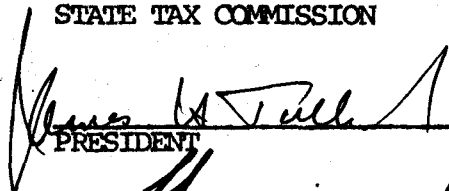
B. That the New York City unincorporated business tax is an income tax within the meaning and intent of Chapter 46, Title S of the Administrative Code for the City of New York. Therefore, petitioners were required to add to their total income petitioner William H. McElnea, Jr.'s share of said deduction in accordance with the meaning and intent of section 632(a) (2) of the Tax Law.

C. That the Audit Division is directed to modify the Notice of Deficiency issued on November 26, 1973 to the extent shown in Conclusion of Law "A", supra; and that, except as so granted, the petition is in all other respects denied.

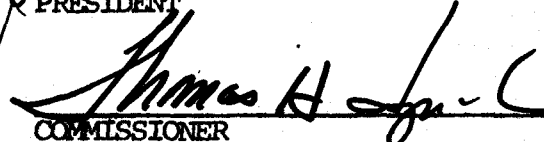
DATED: Albany, New York

NOV 14 1980


STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CLAIM CHECK

HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Wm H. & Jane E. McElnea

William H. & Jane E. McElnea
c/o Van Alstyne, Noel & Co.
120 Broadway
New York, NY 10005



Good & Beautiful
418965

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

November 14, 1980

William H. & Jane E. McElnea
c/o Van Alstyne, Noel & Co.
120 Broadway
New York, NY 10005

Dear Mr. & Mrs. McElnea:

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

In the Matter of the Petition :
of :
WILLIAM H. McELNEA, JR. :
and : DECISION
JANE E. McELNEA :
for Redetermination of Deficiencies or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1960 through 1966. :

Petitioners, William H. McElnea, Jr. and Jane E. McElnea, c/o Van Alstyne, Noel & Co., 120 Broadway, New York, New York 10005, 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 1966 (File No. 01771).

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 William H. McElnea, Jr., a member partner of Van Alstyne, Noel & Co., properly allocated his distributive share of partnership income.

II. Whether petitioners were required to add to total income petitioner William H. McElnea, Jr.'s share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co. for 1966.

FINDINGS OF FACT

1. Petitioners, William H. McElnea, Jr. and Jane E. McElnea, filed New York State income tax nonresident returns for 1960 through 1966, wherein petitioner William H. McElnea, Jr. reported his distributive share of partnership income from Van Alstyne, Noel & Co.

2. Petitioner William H. McElnea, Jr. 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.

3. On November 26, 1973, the Income Tax Bureau issued two notices of deficiency; the first notice was for 1960 and 1966 and asserted personal income tax of \$6,442.80, plus interest of \$3,512.95, for a total sum of \$9,955.75. Said notice was issued on the ground that a net operating loss for 1963, which was previously allowed as a carryback to 1960, was disallowed as a result of an increase in partnership income due to a New York audit of the partnership Van Alstyne, Noel & Co. The adjustment for 1966 was due to a Federal audit and to petitioner William H. McElnea, Jr.'s failure 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. The second notice of deficiency was for 1961 through 1965 and asserted personal income tax of \$20,566.00, plus interest of \$11,285.21, for a total sum of \$31,851.21. Said notice was issued as a result of a New York audit of the partnership Van Alstyne, Noel & Co. for 1961 through 1965 and a Federal audit for 1961, 1962 and 1965.

CONCLUSIONS OF LAW

A. That the Audit Division is hereby directed to recompute William H. McElnea, Jr.'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 within the meaning and intent of Chapter 46, Title S of the Administrative Code for the City of New York. Therefore, petitioners were required to add to their total income petitioner William H. McElnea, Jr.'s share of said deduction in accordance with the meaning and intent of section 632(a) (2) of the Tax Law.

C. That the Audit Division is directed to modify the Notice of Deficiency issued on November 26, 1973 to the extent shown in Conclusion of Law "A", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM H. McELNEA, JR. :
and : DECISION
BARBARA McELNEA :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1967 and 1969. :

Petitioners, William H. McElnea, Jr. and Barbara McElnea, c/o Van Alstyne, Noel & Co., 120 Broadway, New York, New York 10005, 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 1967 and 1969 (File No. 01771).

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).

ISSUE

Whether petitioner William H. McElnea, Jr. was required to add to Federal adjusted gross income his share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co.

FINDINGS OF FACT

1. Petitioners, William H. McElnea, Jr. and Barbara McElnea, timely filed joint New York State income tax resident returns for 1967 and 1969,

wherein petitioner William H. McElnea, Jr. reported his distributive share of partnership income received from Van Alstyne, Noel & Co.

2. Petitioner William H. McElnea, Jr. 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.

3. On November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency for 1967 and 1969 asserting personal income tax of \$3,463.00, penalty, pursuant to section 685(c) of the Tax Law, for 1969 of \$151.00, plus interest of \$856.86, for a total sum of \$4,470.86. Said notice was issued on the ground that petitioners did not add to their Federal adjusted gross income petitioner William H. McElnea, Jr.'s share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co.

CONCLUSIONS OF LAW

A. That the New York City unincorporated business tax is an income tax within the meaning and intent of Chapter 46, Title S of the Administrative Code for the City of New York. Therefore, petitioners William H. McElnea, Jr. and Barbara McElnea were required to add to their Federal adjusted gross income, petitioner William H. McElnea, Jr.'s share of the New York City unincorporated business tax deduction within the meaning and intent of section 612(b)(3) of the Tax Law.

B. That the petition of William H. McElnea, Jr. and Barbara McElnea is denied and the Notice of Deficiency issued on November 26, 1973 is sustained.

DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER