

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Elisabeth McLaughlin :
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 1968-1970. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Elisabeth McLaughlin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

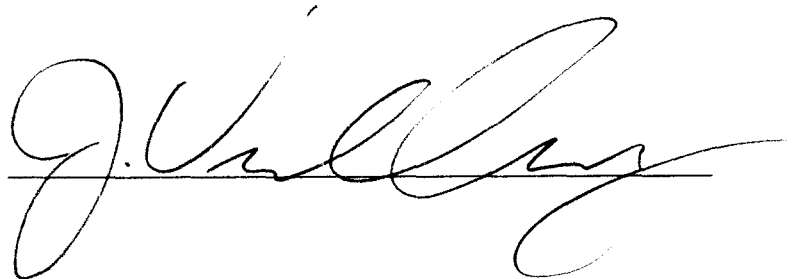
Elisabeth McLaughlin
12 Colonial Lane
Riverside, CT 06878

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
17th day of October, 1980.

Retorah A. Banc



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Elisabeth McLaughlin :

for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1968-1970. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Sydney Under the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

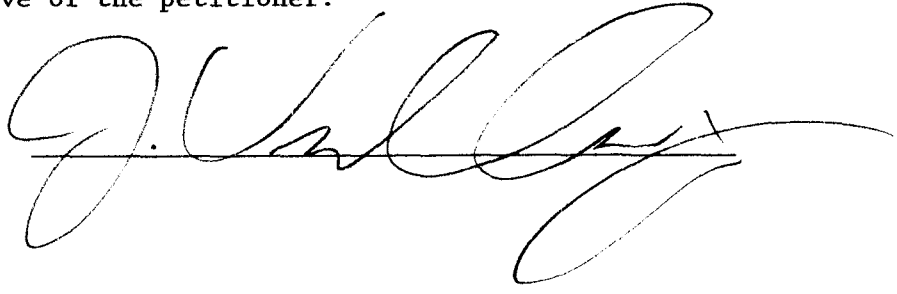
Mr. Sydney Under
48 Wall St.
New York, NY 10005

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 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
17th day of October, 1980.

Dorothy A. Bank



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

October 17, 1980

Elisabeth McLaughlin
12 Colonial Lane
Riverside, CT 06878

Dear Ms. McLaughlin:

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
Sydney Under
48 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ELISABETH MC LAUGHLIN
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1968, 1969 and 1970.

DECISION

Petitioner, Elisabeth McLaughlin, 12 Colonial Lane, Riverside, Connecticut 06878, 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 1968, 1969 and 1970 (File No. 13869).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 20, 1977 at 9:15 A.M. Petitioner appeared by William F. Indoe, Esq. (Sydney Under, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner, who was a nonresident alien for the first eleven months of 1968, was required to include as taxable income on her part year New York State resident return, her entire distributive share of income in a calendar year foreign partnership which did not derive any income from United States sources.

II. Whether petitioner had reasonable cause for her failure to file and pay tax when due for the years in issue.

FINDINGS OF FACT

1. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes against Elisabeth McLaughlin for the years 1968, 1969 and 1970, imposing

additional taxes and penalties. Adjustment to income for 1968 was made on the grounds that when a member of a partnership changes status from a nonresident to a resident, share in partnership income should be included in computation of taxable income for the portion of the year in which the taxable year of the partnership ends. Also, section 685(a)(1) penalty, for failure to file a return when due was asserted for all years in issue and section 685(a)(2) penalty, for failure to pay tax when due was asserted for 1969 and 1970. Accordingly, a Notice of Deficiency was issued April 12, 1974, asserting tax due of \$7,103.26, penalty of \$4,947.07 and interest of \$2,128.14, for a total due in the amount of \$14,178.47.

2. Petitioner, Elisabeth McLaughlin, filed her 1968, 1969 and 1970 State income tax returns on December 30, 1971. Said returns were received January 3, 1972. The returns were prepared by the accounting firm of Haskins & Sells. A statement accompanied each return explaining the reason for late filing.

3. Petitioner was a citizen and resident of Germany until late November, 1968, at which time she was admitted to the United States as a permanent resident. She was a partner in a German company which did no business in the United States. Its fiscal year ended December 31, 1968. In her 1968 Federal Income Tax Return and also her 1968 State return, she reported income from the partnership in the amount of \$5,195.00 which was one-twelfth of her distributive share of partnership income of \$62,340.00. A note of explanation accompanied the Federal return which pointed out that she was a nonresident alien for the first eleven months of 1968 and the return represented one month of partnership income. The Internal Revenue Service did not raise objection to the return.

4. Petitioner relied on the advice of her husband, an attorney, who was a member of the New York Bar, with respect to her tax problems. The financial information from her partnership, whose fiscal year ended December 31, 1968,

was not available for filing a timely return. An extension of time was secured for the 1969 and 1970 Federal returns, however, the Federal returns were not filed before their extended due date. Consideration of an income tax treaty between Germany and the United States which was designed to provide relief against double taxation by the granting of foreign tax credits led petitioner to conclude that no liability existed for either Federal or New York State income taxes. When it became apparent in 1971 that the State Tax Law did not provide for a tax credit for foreign income taxes, petitioner sought further aid and advice from an accounting firm which prepared the returns.

CONCLUSIONS OF LAW

A. That section 612 of the Tax Law provides:

"Sec. 612. New York adjusted gross income of a resident individual -- (a) General -- The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

B. That the following sections of the Internal Revenue Code and Regulations promulgated under the Code are relevant to the proper computation of the petitioner's adjusted gross income:

Section 706 of the Code

GROSS INCOME

"Sec. 706(a) YEAR IN WHICH PARTNERSHIP INCOME IS INCLUDIBLE.-- In computing the taxable income of a partner for a taxable year, the inclusions required by section 702 and section 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner."

Section 1.871-13(a) and (b) of the Regulations

"§ 1.871-13. Taxation of individuals for taxable year of change of U.S. citizenship or residence--(a) In general. (1) An individual who is a citizen or resident of the United States at the beginning of the taxable year but a nonresident alien at the end of the taxable year, or a nonresident alien at the beginning of the taxable year but a citizen or resident of the United States at the end of the taxable year, is taxable for such year as though his taxable year were comprised of two separate periods, one consisting of the time

during which he is a citizen or resident of the United States and the other consisting of the time during which he is not a citizen or resident of the United States. Thus, for example, the income tax liability of an alien individual under chapter 1 of the Code for the taxable year in which he changes his residence will be computed under two different sets of rules, one relating to resident aliens for the period of residence and the other relating to nonresident aliens for the period of nonresidence. However, in determining the taxable income for such year which is subject to the graduated rate of tax imposed by section 1 or 1201 of the Code, all income for the period of U.S. citizenship or residence must be aggregated with the income for the period of nonresidence which is effectively connected for such year with the conduct of a trade or business in the United States.

(2) For purposes of this section, an individual is deemed to be a citizen or resident of the United States for the day on which he becomes a citizen or resident of the United States, a nonresident of the United States for the day on which he abandons his U.S. residence, and an alien for the day on which he gives up his U.S. citizenship.

(b) Acquisition of U.S. citizenship or residence. Income from sources without the United States which is not effectively connected with the conduct by the taxpayer of a trade or business in the United States is not taxable if received by an alien individual while he is not a citizen or resident of the United States after its receipt and before the close of the taxable year. However, income from sources without the United States which is not effectively connected with the conduct by the taxpayer of trade or business in the United States is taxable if received by an individual while he is a citizen or resident of the United States, even though he earns the income earlier in the taxable year while he is neither a citizen nor resident of the United States. (Emphasis added).

C. That the petitioner, at the end of 1968 was a resident alien of the United States when the partnership year ended, so that her distributive share was includible in its entirety in her own 1968 Federal return, under the provisions of section 706(a) of the Internal Revenue Code. Petitioner as such is treated just like a citizen for the purpose of the Code. Thus she would be taxable on the full amount of the distributive share for 1968 of her foreign partnership income, the same as a citizen member of any partnership, domestic or foreign. Section 706(a) contains no exemptions for resident aliens who, like petitioner, have become such while members of a foreign partnership.

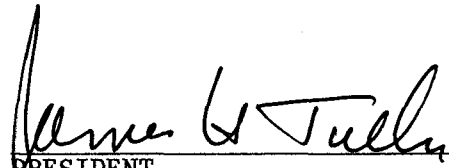
D. That petitioner's failure to timely file New York State income tax returns and pay the tax due for the periods at issue was due to reasonable cause; therefore, penalties accordingly imposed are cancelled.

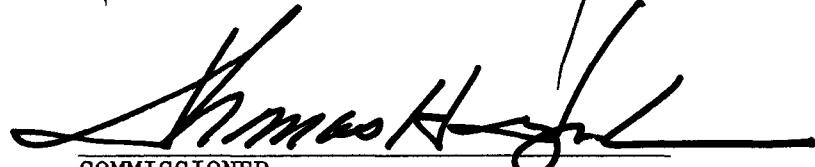
E. That the petition of Elisabeth McLaughlin is granted to the extent of Conclusion of Law "D"; and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT

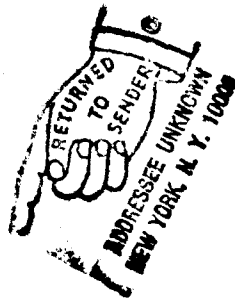
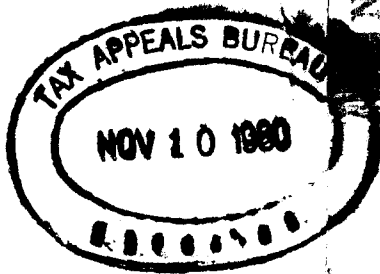

COMMISSIONER


COMMISSIONER

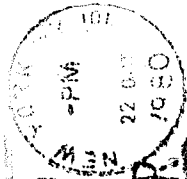
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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS

ALBANY, N. Y. 12227



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

October 17, 1980

Elisabeth McLaughlin
12 Colonial Lane
Riverside, CT 06878

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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
Sydney Under
48 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ELISABETH MC LAUGHLIN

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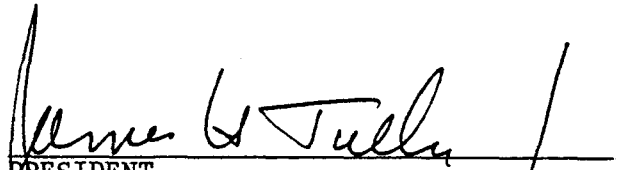
D. That petitioner's failure to timely file New York State income tax returns and pay the tax due for the periods at issue was due to reasonable cause; therefore, penalties accordingly imposed are cancelled.

E. That the petition of Elisabeth McLaughlin is granted to the extent of Conclusion of Law "D"; and except as so granted, the petition is in all other respects denied.

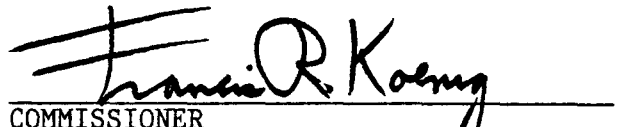
DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER