

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Raymond L. & Gertrude S. Pfeiffer :
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 Raymond L. & Gertrude S. Pfeiffer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

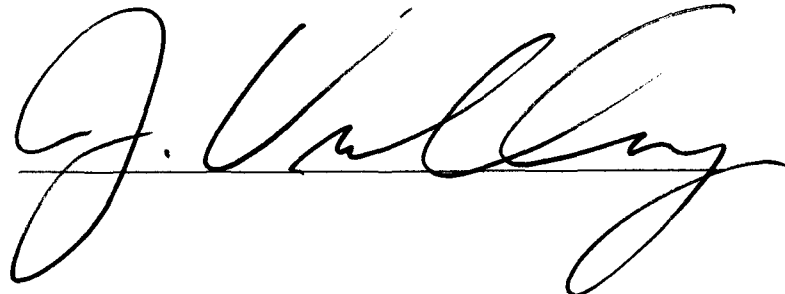
Raymond L. & Gertrude S. Pfeiffer
330 Elm St.
New Canaan, CT 06840

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



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

May 23, 1980

Raymond L. & Gertrude S. Pfeiffer
330 Elm St.
New Canaan, CT 06840

Dear Mr. & Mrs. Pfeiffer:

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
RAYMOND L. PFEIFFER and GERTRUDE S. PFEIFFER
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1970.

DECISION

Petitioners, Raymond L. Pfeiffer and Gertrude S. Pfeiffer, 330 Elm Street, New Canaan, Connecticut 06840, 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. 10726).

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 November 27, 1979 at 2:45 P.M. Petitioner Raymond L. Pfeiffer appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether income of \$20,559.82, derived by petitioner, Raymond L. Pfeiffer, during the year 1970, was a distributive share from the New York partnership of "Dr. Pfeiffer and Dr. Starr", or a capital gain realized on the sale of petitioner's partnership interest.

FINDINGS OF FACT

1. Petitioners, Raymond L. Pfeiffer and Gertrude S. Pfeiffer, filed a joint New York State nonresident income tax return for the year 1970. No income or deductions were reported on said return, but an explanatory letter attached thereto stated, in part, that "the only money received from a New York source was a partial settlement from sale of medical practice".

2. On November 20, 1973 the Income Tax Bureau issued a Statement of Audit Changes to petitioners, wherein it held that petitioner Raymond L. Pfeiffer was "a member of a partnership doing business in New York State and received a distributive share of \$20,599.82 representing taxable income for 1970". In computing petitioners' liability, said income was reduced by an adjustment of \$2,055.98, which represented the maximum allowable deduction for payments to a self-employed retirement plan. Accordingly, a Notice of Deficiency was issued against the petitioners on January 27, 1975, asserting personal income tax of \$788.41, plus interest of \$178.94, for a total due of \$967.35.

3. Petitioner Raymond L. Pfeiffer contended that when he retired from the medical partnership of "Dr. Pfeiffer and Dr. Starr" in the spring of 1969, said partnership was terminated. He claimed that on retiring, he sold his patients' records to Dr. William C. Starr for consideration of 33 percent of the fees collected from services rendered by Dr. Starr to petitioners' patients through December 31, 1971. As such, he contends that the income at issue is in the nature of a capital gain, subject to capital gains treatment, rather than a distributive share from the partnership.

4. Petitioner testified that there was no written instrument drawn, governing the terms of the purported sale.

5. Petitioner contended that his equipment was removed from the partnership premises on retiring, and that only his patients' records were sold, but this contention is contrary to Term "15" of the most recent partnership agreement, dated May 3, 1968, wherein it is stated that:

In the event of the termination of the partnership and the continuation of the practice by one of the parties or by the assignees of one of the parties, the records of the partnership including patient records and office financial records shall become the property of the party continuing the practice (or his assignee).

6. The Balance Sheet of the partnership dated December 31, 1970, and the Profit and Loss Statement for the year 1970, which were prepared by the partnerships regularly retained certified public accountant, treat the business entity as a continuing partnership. Said statements show fees, expenses, net profit, withdrawals and a capital account attributable to petitioner Raymond L. Pfeiffer. The net profit attributable to the petitioner was \$20,559.82, the amount at issue herein.

7. No documentation was submitted by the petitioner to evidence a sale of his partnership interest.

CONCLUSIONS OF LAW

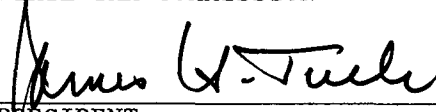
A. That petitioner has failed to sustain his burden of proof required under section 689(e) of the Tax Law to show that the income of \$20,559.82 should properly be characterized and treated as a capital gain on the sale of his interest in the partnership of "Dr. Pfeiffer and Dr. Starr". Accordingly, said income is deemed to be petitioner Raymond L. Pfeiffer's distributive share from said partnership for taxable year 1970 as reported on the accounting statements of the partnership.

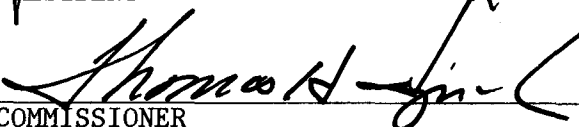
B. That the petition of Raymond L. Pfeiffer and Gertrude S. Pfeiffer is denied and the Notice of Deficiency dated January 27, 1975 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER