

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Revis G. Jr. & Judith M. Rhodes :

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 1970. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Revis G. Jr. & Judith M. Rhodes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

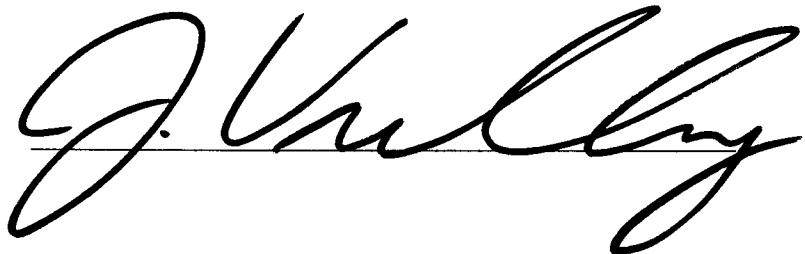
Revis G. Jr. & Judith M. Rhodes
6 Broadmoor Dr.
Rumson, NJ 07760

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
16th day of May, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
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of a Determination or a Refund of
Personal Income Tax :
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for the Year 1970. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Myron R. Hirsch 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. Myron R. Hirsch
Dorosin, Trent & Hirsch
500 Westfield Ave.
Elizabeth, NJ 07208

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
16th day of May, 1980.

Joanne Krupp

J. Vredenburg

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

May 16, 1980

Revis G. Jr. & Judith M. Rhodes
6 Broadmoor Dr.
Rumson, NJ 07760

Dear Mr. & Mrs. Rhodes:

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
Myron R. Hirsch
Dorosin, Trent & Hirsch
500 Westfield Ave.
Elizabeth, NJ 07208
Taxing Bureau's Representative

STATE TAX COMMISSION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1970. :

II. Whether petitioner Revis G. Rhodes, Jr. may carry forward a partnership loss suffered in 1966 to 1970 under section 632 of the Tax Law (incorporating section 172(b) of the United States Internal Revenue Code) without first attempting to carry it back three years.

FINDINGS OF FACT

1. Petitioners, Revis G. Rhodes, Jr. and Judith M. Rhodes, filed a New York State Income Tax Nonresident Return for 1970 on which they showed total Federal income of \$50,077.08 and total New York State income of \$22,534.55. The Federal income was shown to have consisted of \$55,253.00 in "Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc." less a 1966-1967 loss carry forward of \$5,175.92. The New York income was shown to have consisted of \$22,534.55 in "Wages, salaries, tips, etc." The \$22,534.55 was calculated by taking the \$50,077.08 in Federal income and multiplying it by a factor of 96/213, representing the number of days claimed to have been worked in New York State (96) over the total number of days claimed to have been worked in the year (213).

2. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners in the amount of \$4,036.16, plus interest. The basis for the adjustment was a) that petitioners could not allocate Mr. Rhodes' partnership income since the partnership did not allocate income; and b) that the unused partnership carry forward loss should have been deducted in a year prior to 1970.

3. Throughout 1970, petitioner Revis G. Rhodes, Jr., a nonresident nondomiciliary of New York State, was a partner in the New York law firm of Marn & Jangarathis, a partnership. Louis E. Marn and James C. Jangarathis, the firm's senior partners, retained total managerial control.

4. The partnership agreement entitled Mr. Rhodes to a three-fourteenth's distributive share of partnership income. All of Mr. Rhodes' 1970 income from the firm of Marn & Jangarathis was for services as a partner.

5. The partnership did not allocate any of its income between New Jersey and New York in 1970.

6. In attempting to apply his 1966 partnership loss to 1970, petitioner Revis G. Rhodes, Jr. failed to first carry it back three years.

CONCLUSIONS OF LAW

A. That petitioner Revis G. Rhodes was not an employee of the partnership Marn & Jangarathis and, therefore, cannot allocate partnership income based on days worked within and without the State. That since the partnership did not allocate its income to sources within and without the State, petitioner's entire distributive share of partnership income is includable in total New York Income within the meaning and intent of section 637(a) (1) of the Tax Law and 20 NYCRR 134.1 (See, Matter of Thomas M. Debevoise v State Tax Commission 52 A.D.2d 1023).

B. That petitioner Revis G. Rhodes, Jr., must first carry back his 1966 partnership loss three years (under section 632 of the Tax Law); then, if not exhausted, petitioner may carry it forward for five years.

C. That the petition of Revis G. Rhodes, Jr. and Judith M. Rhodes is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER