

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gerald D. & Doris Stern :
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 1970 - 1972. :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Gerald D. & Doris Stern, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald D. & Doris Stern
3206 Woodbine Street
Chevy Chase, MD 20015
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
28th day of November, 1980.

Dorah A. Bank

J. Vredenburg

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

November 28, 1980

Gerald D. & Doris Stern
3206 Woodbine Street
Chevy Chase, MD 20015

Dear Mr. & Mrs. Stern:

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 Petitions	:	
	:	
of	:	
	:	
GERALD D. STERN and DORIS STERN	:	DECISION
	:	
for Redetermination of Deficiencies or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970, 1971 and 1972.	:	

Petitioners, Gerald D. Stern and Doris Stern, 20 Morris Lane, Scarsdale, New York 10583, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1970, 1971 and 1972 (File Nos. 13675 and 14939).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 17, 1980 at 1:15 P.M. Petitioner Gerald D. Stern appeared pro se and for his wife, petitioner Doris Stern. The Audit Division appeared by Ralph J. Vecchio, Esq. (F. Levitt, Esq., of counsel).

ISSUES

- I. Whether investment losses constitute losses from New York sources.
- II. Whether a carryover loss is includible in petitioner's New York adjusted gross income.
- III. Whether petitioner's burden of proof is limited to discrediting the original basis for a disallowance.

FINDINGS OF FACT

1. Petitioners, Gerald D. Stern and Doris Stern, timely filed joint New York State income tax nonresident returns for the years 1970, 1971 and 1972, on which business income and losses were reported from several partnerships.

2. On March 25, 1974, a Notice of Deficiency was issued by the Audit Division in the amount of \$899.22, plus interest for the years 1970 and 1971, along with an explanatory Statement of Audit Changes, on which the following adjustments were made:

	<u>1970</u>	<u>1971</u>
Capital loss carryover	\$ 581.00	
Rindge Assoc. (loss)	1,645.00	\$ 906.00
Additional New York Itemized Deduction allowed	(92.00)	
P-W Assoc. (loss)		1,513.00
Cross Creek Assoc. (loss)		1,870.00
TOTAL ADJUSTMENTS	<u>\$2,134.00</u>	<u>\$4,289.00</u>

The additional New York Itemized Deduction allowed was not challenged by petitioner and is not at issue. The Statement of Audit Changes indicated that the disallowances for the year 1971 were made due to petitioner's failure to reply to their letter of October 25, 1973.

3. On April 12, 1976, the Audit Division issued a Notice of Deficiency in the amount of \$2,134.49, plus interest, for 1972, along with an explanatory Statement of Audit Changes on which the following losses were disallowed:

Rindge Assoc.	\$ 875.00
P-W Assoc.	3,648.00
Cross Creek Assoc.	7,186.00
Delaware Rental Assoc.	2,415.00
Total Adjustments	<u>\$14,124.00</u>

The Statement of Audit Changes indicated that the losses were disallowed since they were "not connected with nor derived from New York sources." Petitioner conceded the disallowance of the loss of \$2,415.00 derived from the Delaware Rental Association.

4. Petitioner Gerald D. Stern is an attorney and partner of a New York law firm (hereinafter, the partnership). Prior to 1970, petitioners, Gerald D. and Doris Stern resided in New York State, but during the years at issue (1970, 1971 and 1972) they resided in the state of Maryland.

5. As a resident of Maryland, petitioner Gerald D. Stern worked in an office of the partnership, located in Washington, D.C. Both while in New York and in Maryland, petitioner participated in certain investment opportunities made available to him through the activities of the partnership. These investment opportunities are the losses at issue, which were described as follows:

<u>Name</u>	<u>Location</u>	<u>Activity</u>
Rindge Assoc.	Massachusetts	Apt. Building
P-W Assoc.	Minnesota	Raised Animals
Cross Creek Assoc.	California	Apt. Building

Petitioner Gerald D. Stern maintained that the partnership acquired and distributed these investment opportunities among the partners. Accordingly, he argued that these "opportunities" represented compensation derived from New York sources, and any losses derived therefrom would be deductible.

6. When investment opportunities were made available to petitioner, he had the choice to accept or reject the offer. If the investment opportunity was accepted, petitioner would invest from personal funds.

7. Petitioner Gerald D. Stern contended that the losses disallowed for the year 1971, were inappropriately disallowed, since the Audit Division, did in fact, receive a reply on November 26, 1973 to their letter of October 25, 1973. The Audit Division's letter of October 25, 1973, requested certain information regarding the losses at issue, and requested a reply within 15 days. Petitioner Doris Stern replied that her husband was in the hospital, and requested "a postponement in providing the additional information".

8. Petitioners reported a capital loss of \$581.00 for the year 1970, which consisted of the following:

Loss on sale of common stock (a) 50%	\$ 1.00
Carryover loss	573.00
Section 1231 loss (from the partnership)	7.00
Total capital loss at issue	<u>\$581.00</u>

Petitioner Gerald D. Stern testified that the carryover loss of \$573.00 was carried over from the year 1969, when he was a resident of New York State. Accordingly, he reasoned that the carryover loss was deductible on his 1970 nonresident tax return.

CONCLUSIONS OF LAW

A. That petitioners' residential status at the time of the capital loss carryover deduction determines its deductibility under Article 22 of the Tax Law. Although petitioners were New York State residents in the year the capital loss was sustained, they were nonresidents in the year they sought to deduct the capital loss carryover. Therefore, the capital loss carryover is not includible in their New York adjusted gross income within the meaning and intent of section 632(b)(3) and 20 NYCRR 131.6 (Petition of George W. Melcher, Jr., et. al., New York State Tax Commission Decision, November 27, 1970; Petition of Joseph B. Loew, New York State Tax Commission Decision, March 29, 1971.)

B. That the investment losses from Rindge Associates, P-W Associates, and Cross Creek Associates reported for the years 1970, 1971 and 1972 do not constitute losses derived from, or connected with New York sources, and accordingly, are not includible in the New York adjusted gross income of petitioners, Gerald D. Stern and Doris Stern, in accordance with the meaning and intent of section 632(b) of the Tax Law and 20 NYCRR 131.5.

C. That petitioners' inference that the burden of proof for the year 1971 was limited to establishing that they replied to the Audit Division's letter of October 25, 1973, is erroneous and contrary to the meaning and intent of section 689(e) of the Tax Law. Rather, petitioners, Gerald D. Stern and Doris Stern, must establish, by a fair preponderance of the evidence, all

facts necessary to show that they were entitled to the losses (at issue) under Article 22 of the Tax Law.

D. That the petition of Gerald D. Stern and Doris Stern is granted to the extent that section 1231 loss of \$7.00 from the partnership is includible in their 1970 New York adjusted gross income.

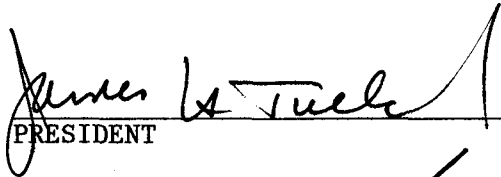
E. That the Audit Division is hereby directed to accordingly modify the Notice of Deficiency issued March 25, 1974; and that, except as so granted, the petition for 1970 and 1971 is in all other respects denied.

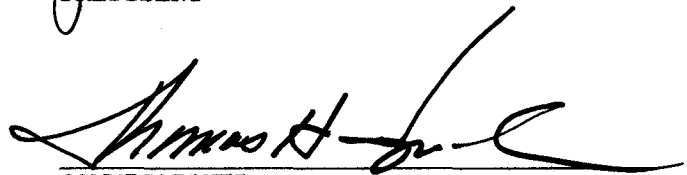
F. That the Notice of Deficiency issued April 12, 1976, for the year 1972 is sustained.

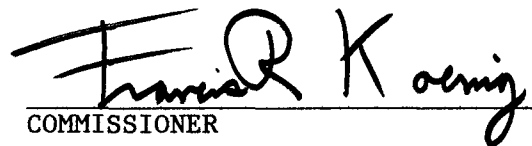
DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Gerald D. & Doris Stern :

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 1970 - 1972. :

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 19th day of December, 1980, he served the within notice of Decision by certified mail upon Gerald D. & Doris Stern, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald D. & Doris Stern
20 Morris Lane
Scarsdale, NY 10583

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.

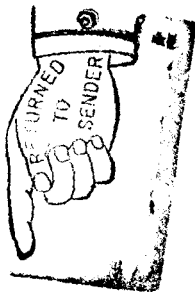
Sworn to before me this
19th day of December, 1980.

Joan Schultz

J. Vredenburg

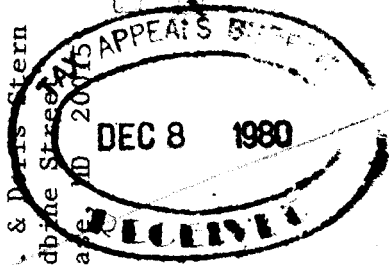
TA 26 (9-79)

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



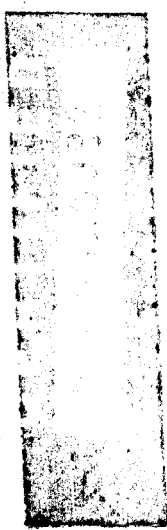
10/10/89
Handwritten signature
Not Forwardable

Gerald D. & Doris Stern
3206 Woodbine Street
Chevy Chase, MD 20715



Postage and postage paid
address
forwardable
addressed unknown

Remailed
12/19/80



B/A
Handwritten signature

REQUEST FOR BETTER ADDRESS

S.C. Dec. (22) 11-28.

33

13675 + 14939
11/08

Requested by <i>J. Vredenburg</i>	Unit Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request DEC 8 1980
--------------------------------------	--	-------------------------------

Please find most recent address of taxpayer described below; return to person named above.

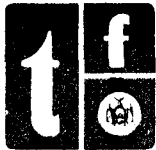
Social Security Number <i>085-26-1665</i> <i>077-30-7922</i>	Date of Petition <i>74-06-24</i>
Name <i>Gerald D. & Doris Stern</i>	
Address <i>3206 Woodbine Street.</i> <i>Chevy Chase, MD</i> <i>20015</i>	

Results of search by Files

<input checked="" type="checkbox"/> New address:	<i>20-Morris Ln.</i> <i>Scarsdale, N.Y. 10583</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by <i>L. Panetta</i>	Section <i>Master Index</i>	Date of Search <i>12-11-80</i>
-------------------------------	-----------------------------	-----------------------------------

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER



New York State Department of
TAXATION and FINANCE

Sternberger Motor
Corp.

MEMORANDUM

AD-53 (6/76)

TO: Mr. Paul Coburn

OFFICE: Withholding Tax

FROM: Jerry Cahill

DATE: August 18, 1980

SUBJECT: High Penalty Case
Sternberger Motor Corp.
4550 Court Square
Long Island City, NY 11101

ID # 11-1371420

In accordance with the provisions of memorandum number E-94.1, the approval of the State Tax Commission is required.

Penalties totaling \$66,120.24 on numerous assessments covering the semimonthly periods August 1973 thru 7/15/76 are being protested due to reasonable cause.

As per enclosed letter from taxpayer, their former treasurer (who was responsible for filing of all taxes) deliberately deceived his employers. In addition to not filing their tax returns, he embezzled substantial monies through manipulation of their new computer system.

Taxpayer acknowledges discovery of the situation in May of 1976, at which time they also discovered "hundreds" of letters from various tax departments in various files used by their former employee.

All taxes and interest for these periods have been paid via consistent payments beginning in June 1976 and ending in June of 1979.

Taxpayer's record since this period of time has been excellent - no additional assessments have been issued.

One additional item of importance, this case was misplaced and laid dormant for over one year. Upon discovery and further examination, it was determined that the taxpayer owed an additional \$7,951.03 in tax and interest.

He was informed many months ago that the matter had gone to the State Tax Commission. Having heard nothing, he had assumed the matter was settled.

Taxpayer quickly remitted the additional \$7,951.03 upon receipt of our latest correspondence. He did, however, express a desire for an expedient decision regarding his request for penalty cancellation.

Jerry Cahill

Director Date

Registration & Returns, Processing Bureau

James H. ...

President Date

James H. ...

Commissioner Date

Thomas R. Koenig

Commissioner

9/2/80

Date

approved ☒

disapproved ☐

approved ☒

disapproved ☐

approved ☒

disapproved ☐