

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Martin & Linda Anopolsky :
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 :
1975.

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Martin & Linda Anopolsky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin & Linda Anopolsky
50 Shield Dr.
Woodcliff Lake, NJ 07675

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
30th day of October, 1981.

James A. Haglund

J. Vredenburg

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

October 30, 1981

Martin & Linda Anopolsky
50 Shield Dr.
Woodcliff Lake, NJ 07675

Dear Mr. & Mrs. Anopolsky:

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	:	
	:	
MARTIN ANOPOLSKY and LINDA ANOPOLSKY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1975.	:	

Petitioners, Martin Anopolsky and Linda Anopolsky, 50 Shield Drive, Woodcliff Lake, New Jersey 07675, 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 1975 (File No. 23066).

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 January 8, 1981 at 9:15 A.M. Petitioner Martin Anopolsky appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioner, Martin Anopolsky, a nonresident of New York State at the close of taxable year 1975, may allocate his distributive share of partnership income from Joel Popkin & Co., where said partnership does not allocate.

II. Whether petitioners are properly entitled to claim a loss from worthless securities on their nonresident return.

III. Whether petitioners, who changed their status during the year from residents to nonresidents, are required to pay an income tax which is greater than that which would be due had no change of residence occurred.

FINDINGS OF FACT

1. Petitioners, Martin Anopolsky and Linda Anopolsky, timely filed a joint New York State Income Tax Resident Return for the period January 1, through July 31, 1975. For the period August 1, through December 31, 1975 they filed a joint nonresident return. Said returns were filed in conjunction with a Schedule for Change of Resident Status whereon petitioner Martin Anopolsky prorated his distributive shares of partnership income to both his resident and nonresident returns. Further, petitioner then allocated his prorated nonresident portion of distributive shares to sources within and without New York State. Such allocation yielded 72.46 percent of the prorated nonresident portion to New York State.

2. On June 27, 1977, the Audit Division issued a Statement of Audit Changes to petitioners wherein it recomputed their tax liability by including the full distributive share from Joel Popkin & Co. on petitioners' nonresident return since the partnership was on a calendar year basis. Further, no allocation of such distributive share was allowed since the partnership did not allocate. The Audit Division also disallowed a partnership loss of \$1,047.00 derived from P.A.T. Associates. Additionally, a net long-term capital loss from worthless securities was disallowed from petitioners' resident return on the basis that "Federal Law requires that the loss from worthless stock be determined as of the last day of the calendar year." Accordingly, a Notice of Deficiency was issued against petitioners on July 31, 1978 asserting additional personal income tax of \$1,250.67, plus interest of \$243.78, for a total due of \$1,494.45.

3. Petitioner contended that the decision as to whether or not he may allocate his distributive share from Joel Popkin & Co. cannot be based upon whether said partnership allocated, since it was an accounting partnership

which did not claim an allocation as it was exempt from the imposition of unincorporated business tax.

4. Although petitioner contended that an office situated in his personal residence was a bona fide office of the partnership, he failed to submit any documentation to support such claim.

5. Petitioners did not introduce any documentary evidence or offer testimony regarding the disallowance of the partnership loss of \$1,047.00 derived from P.A.T. Associates or the disallowance of a net long-term capital loss from worthless securities.

CONCLUSIONS OF LAW

A. That 20 NYCRR 148.6 provides:

"where a member of a partnership changes his status from resident to nonresident..., his distributive share of partnership income...shall be included in the computation of his taxable income for the portion of the taxable year in which or with which the taxable year of the partnership ends, and treatment of his distributive share for New York income tax purposes shall be determined by his status as a resident or nonresident at such time. Such distributive share of partnership income...is not prorated between the separate resident and nonresident returns..."

B. That pursuant to section 637(b)(2) of the Tax Law, a nonresident partner may not allocate "as income or gain from sources outside New York, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside New York to partnership income or gain from all sources". Such income is allocated to New York sources on the same basis as the firm uses to allocate the distributive share of each partner (see Matter of Thomas M. Debevoise et al. v. State Tax Commission, 52 A.D.2d 1023, 383 N.Y.S.2d 698). Accordingly, petitioner Martin Anopolsky is not properly entitled to allocate any portion of his distributive share of income from Joel Popkin & Co. to sources outside New York State.

C. That petitioners have failed to sustain the burden of proof pursuant to section 689(e) of the Tax Law regarding both the partnership loss derived from P.A.T. Associates and the long-term capital loss from worthless securities.

D. That in accordance with the meaning and intent of section 654 of the Tax Law and 20 NYCRR 148, the tax payable when a change of residence occurs during the year is not limited to that which would be payable had such individual remained a resident for the entire year.

E. That the petition of Martin Anopolsky and Linda Anopolsky is denied and the Notice of Deficiency dated July 31, 1978 is sustained, together with such additional interest as may be lawfully owing.

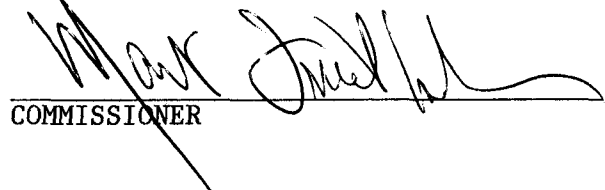
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER