

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Robert & Elinor Ferdon

:

:

: 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 Years 1973 & 1974

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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Robert & Elinor Ferdon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

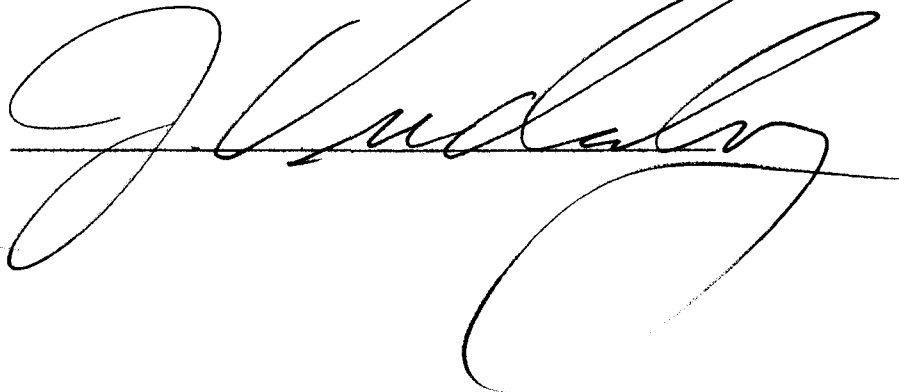
Robert & Elinor Ferdon
Litchfield Way
Alpine, NJ 07520

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
1st day of May, 1981.

Annex P. Hegeland



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert & Elinor Ferdon :
: 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 Years 1973 & 1974 :

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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Robert E. Schulman 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. Robert E. Schulman
30 E. 42nd St.
New York, NY 10017

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
1st day of May, 1981.

Conrad A. Haglund

Jay Vredenburg

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

May 1, 1981

Robert & Elinor Ferdon
Litchfield Way
Alpine, NJ 07520

Dear Mr. & Mrs. Ferdon:

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
Robert E. Schulman
30 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT and ELINOR FERDON	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973 and 1974.	:	

Petitioners, Robert and Elinor Ferdon, Litchfield Way, Alpine, New Jersey 07520, 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 1973 and 1974 (File No. 19421).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 24, 1979 at 2:45 P.M. Petitioners appeared by Robert E. Schulman, CPA. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether nonresident petitioners are entitled to deduct losses and costs of businesses not carried on in New York in arriving at their New York taxable income.

II. With respect to a business carried on in New York, which is an electing small business corporation for federal income tax purposes, whether nonresident petitioners are entitled to deduct a section 1244 (Internal Revenue Code) loss on their 1974 New York tax returns.

FINDINGS OF FACT

1. On April 11, 1977, the Audit Division issued a Notice of Deficiency to petitioners for \$12,939.67, plus interest, for the years 1973 and 1974.

2. Petitioners are nonresident individuals. Mr. Ferdon is a partner in the New York City law firm of Mudge, Rose, Guthrie & Alexander. He and other of his partners invested in 1971 Minerals Ltd., American Housing Partners and Conoco Exploration Ltd. Mr. Ferdon's law firm does legal work for each of these companies. Petitioners claim that the operations of these companies are so interrelated with Mr. Ferdon's law practice income, which is derived in New York and taxable by New York, that petitioners are entitled to deduct from this income losses sustained by the companies.

3. 1971 Minerals Ltd. is a New Jersey partnership involved in natural resource exploration in the midwest and farwest of the United States. In 1973 and 1974 the company incurred certain losses and costs which petitioners seek to deduct in arriving at their New York taxable income.

4. American Housing Partners is a partnership with offices in Los Angeles, California. This partnership carried on no business in New York during the applicable period. It incurred certain losses in 1973 and 1974 which petitioners seek to deduct in arriving at their New York taxable income.

5. Conoco Exploration Ltd. is located in Ponca City, Oklahoma. It did not carry on any business in New York during the applicable period. It incurred certain losses and costs in 1973 and 1974 which petitioners seek to deduct in arriving at their New York taxable income.

6. Mr. Ferdon was a shareholder, investor and director in Advertising Projections Inc., a New York corporation. The corporation carried on business in New York in 1974. The corporation is an electing small business corporation for federal income tax purposes. Petitioners seek to avail themselves of section 1244 of the Internal Revenue Code with respect to a 1974 loss of \$34,334.00.

7. Taxpayers petition dated July 1, 1977 provides, in part as follows: "Additional First Year Depreciation Deduction 1974 - \$2,011.47. The ordinary income allocated to the taxpayer by the New York law firm (Mudge, Rose, Guthrie & Alexander) was computed before deduction of additional first year depreciation. Accordingly, the deduction was taken as a separate item by the taxpayer and does not constitute a double deduction as indicated on NYS form IT-38...". At the formal hearing, petitioners' representative conceded that there was a double depreciation deduction and stated that petitioners would not dispute this item.

8. Taxpayers' petition provides, in part, as follows: "Partnership Expenses Adjustment: 1973-\$845.44, 1974-\$899.14. 100 percent of partnership expenses incurred by the taxpayer were applicable to income earned from New York sources and therefore deductible from said income, notwithstanding the K-1 New York State allocation for nonresidents." Petitioners offered no evidence to support their position as to this item.

CONCLUSIONS OF LAW

A. That section 632(a) of the Tax Law provides, in pertinent part, that the New York adjusted gross income of a nonresident individual includes his distributive share of partnership income, gain, loss and deduction (as determined under section 637 of the Tax Law) which is derived from or connected with New York sources.

B. That even though petitioner Robert Ferdon's law firm did legal work for 1971 Minerals, Ltd., American Housing Partners and Conoco Exploration, Ltd., the income or losses attributable to said partnerships did not constitute gains or losses from New York sources, within the meaning and intent of section 637 of the Tax Law. (Petition of Joel Mallin and Judith Mallin, State Tax Commission, October 5, 1979.)

C. That the loss incurred by petitioners on the stock of Advertising Projections, Inc., although treated as an ordinary loss pursuant to section 1244 of the Internal Revenue Code, does not constitute a loss derived from New York sources or from the disposition of intangible personal property employed in a business, trade, profession or occupation carried on in New York State, within the meaning and intent of section 632(b)(2) and (3) of the Tax Law and 20 NYCRR 131.5. Therefore, the loss cannot be considered in arriving at nonresident petitioners' New York adjusted gross income. (Petition of Thomas D. and Joanne Ferguson, State Tax Commission, August 25, 1978.)

D. That as to the "Additional First Year Depreciation Deduction [for] 1974," referred to in the petition, petitioners conceded at the formal hearing that they had made a double depreciation deduction.

E. That as to the "Partnership Expenses Adjustment" for 1973 and 1974, referred to in the petition, petitioners failed to sustain their burden of proof, having offered no evidence on this issue.

F. That the petition of Robert and Elinor Ferdon is denied and the Notice of Deficiency is sustained.

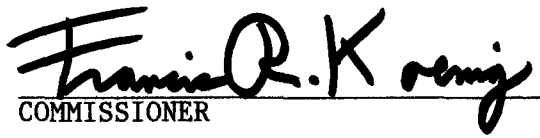
DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER