

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Thomas F. & Mary Jane Noone :

: 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 :
1972.

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 3rd day of July, 1981, he served the within notice of Decision by certified mail upon Thomas F. & Mary Jane Noone, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas F. & Mary Jane Noone
2 Oaklawn Rd.
Short Hills, NJ 07078

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
3rd day of July, 1981.

James A. Hagedorn

J. Vredenburg

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

July 3, 1981

Thomas F. & Mary Jane Noone
2 Oaklawn Rd.
Short Hills, NJ 07078

Dear Mr. & Mrs. Noone:

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
THOMAS F. NOONE and MARY JANE NOONE
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1972. :

DECISION

Petitioners, Thomas F. Noone and Mary Jane Noone, 2 Oaklawn Road, Short Hills, New Jersey 07078, 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 1972 (File No. 14082).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 13, 1978 at 1:15 P.M. Petitioner, Thomas F. Noone, appeared pro se and for his wife. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether income and losses from various partnerships may be allocated or prorated to petitioners' resident and nonresident income tax returns.

II. Whether partnership losses, if determined not to be allocable between the resident and nonresident periods, may be deducted on petitioners' nonresident income tax return.

FINDINGS OF FACT

1. Petitioners, Thomas F. Noone and Mary Jane Noone, changed their status from residents to nonresidents of New York on April 25, 1972. Pursuant to

section 654(a) of the Tax Law, they timely filed two personal income tax returns for 1972, a resident income tax return covering the period of their New York residence (1/1/72 to 4/25/72) and a nonresident income tax return covering the balance of the tax year. Income, losses, deductions and exemptions were prorated one-third to the resident period and two-thirds to the nonresident period.

2. On January 26, 1976, the Audit Division issued a Notice of Deficiency to petitioners for the year 1972, asserting that additional personal income tax of \$7,271.21 was due together with interest. Said Notice of Deficiency was based on an explanatory Statement of Audit Changes wherein the following adjustments were proposed:

a. that partnership income of \$145,333.20 earned by petitioner Thomas F. Noone from the law firm of Emmet, Marvin & Martin could not be prorated between the resident and nonresident periods and was fully taxable in the nonresident period.

b. that New York income earned in the nonresident period must be increased by petitioner Thomas F. Noone's share of the New York City unincorporated business tax deduction taken on the partnership return of Emmet, Marvin & Martin.

c. that petitioner Thomas F. Noone's share of five partnership losses totaling \$34,070.00 were attributable solely to the nonresident period and could not be deducted in computing New York source income earned during the nonresident period since all five partnerships owned real estate located outside New York State.

3. By letter dated April 19, 1976, addressed to the Department of Taxation and Finance, petitioners conceded the accuracy of the increase in total New

York income due to Thomas F. Noone's distributive share of New York City unincorporated business tax. A check in the amount of \$1,518.00 was enclosed with petitioners' letter of April 19, 1976.

4. During the year 1972 petitioner, Thomas F. Noone, was a general partner in the law firm of Emmet, Marvin & Martin (hereinafter "the firm"). Both the firm and petitioners were calendar year basis taxpayers. Thomas F. Noone's distributive share of partnership income from the firm totaled \$145,333.20.

5. Petitioner Thomas F. Noone was also a limited partner in 1972 in the following limited partnerships: Southeastern Leasing Company of Milton, Southeastern Leasing Company of Phenix City, Southeastern Leasing Company of Montgomery (hereinafter collectively referred to as "Southeastern Partnerships"), the Chateau Apartments, Limited (hereinafter "Chateau"), and Village Oaks, Limited (hereinafter "Village Oaks"). The Southeastern Partnerships were all partnerships formed under the laws of the State of New York, Chateau was a limited partnership formed under the laws of the State of Washington and Village Oaks was a limited partnership formed under the laws of the State of Illinois. All five partnerships owned real estate located outside the State of New York, all were calendar year basis partnerships and all sustained losses.

6. It is petitioners' contention that the Southeastern Partnerships were New York partnerships, organized under New York law, and that any income or loss from said partnerships would be New York source income or loss to a nonresident of the State, irrespective of the fact that the partnerships owned real estate located outside the State.

7. Petitioners also argue that the losses incurred from the Chateau and Village Oaks partnerships are deductible on their nonresident income tax return

since these losses were derived from or connected with New York sources. To support this argument petitioners point out that:

- a. an informal investment group had been formed by petitioner Thomas F. Noone and two other members of the firm, which was based in New York, for the purpose of investing in Chateau and Village Oaks.
- b. the proposed investments in Chateau and Village Oaks were presented to petitioner Thomas F. Noone and his partners in the firm in New York.
- c. the subscription agreements for the two partnerships were governed by New York Law.

CONCLUSIONS OF LAW

A. That 20 NYCRR 148.6 provides in pertinent part that:

"Where a member of a partnership changes his status from resident to nonresident or vice versa, his distributive share of partnership income, gain, loss and deduction 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, gain, loss and deduction is not prorated between the separate resident and nonresident returns required under this Part."

Accordingly, petitioner may not prorate partnership income or losses one-third to the resident period and two-thirds to the nonresident period. Since the partnerships involved herein are all on a calendar year basis and since petitioners were nonresidents of New York on December 31, 1972, all income and losses generated from said partnerships are attributable solely to the nonresident period (Kritzik v. Gallman, 41 A.D.2d 994).

B. That petitioner Thomas F. Noone's distributive share of losses from the five limited partnerships amounting to \$34,070.00 cannot be deducted in computing New York source income earned in the nonresident period since said losses are not derived from or connected with New York State sources within the

meaning and intent of sections 637(a)(1), 632(a)(1), and 632(b)(1) of the Tax Law and 20 NYCRR 134.1. (Matter of the Petition of Joel Mallin and Judith Mallin, State Tax Commission, October 5, 1979.)

C. That petitioners are to be given credit for the payment made on April 19, 1976, in the amount of \$1,518.00.

D. That the petition of Thomas F. Noone and Mary Jane Noone is granted to the extent indicated in Conclusion of Law "C" and that, except as so granted, the petition is in all other respects denied.

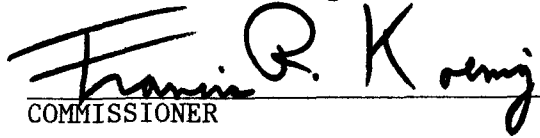
DATED: Albany, New York

JUL 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER