

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

John D. & Helen Ohlandt :

: 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 :
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 31st day of July, 1981, he served the within notice of Decision by certified mail upon John D. & Helen Ohlandt, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John D. & Helen Ohlandt
3 Old Kent Rd. N.
Tolland, CT 06084

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
31st day of July, 1981.

Annue D. Heyland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

John D. & Helen Ohlandt

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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 :
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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Robert W. Taylor the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert W. Taylor
160 Broadway
New York, NY 10038

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
31st day of July, 1981.

Ernie R. Haglund

J. Vredenburg

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

July 31, 1981

John D. & Helen Ohlandt
3 Old Kent Rd. N.
Tolland, CT 06084

Dear Mr. & Mrs. Ohlandt:

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 W. Taylor
160 Broadway
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
JOHN D. OHLANDT, JR. and HELEN OHLANDT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1974.	:	

Petitioners, John D. Ohlandt, Jr. and Helen Ohlandt, RFD 3, Old Post Road, Tolland, Connecticut 06084, 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 1974 (File Nos. 23975 and 23976).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 7, 1980 at 11:00 A.M. Petitioners appeared by Robert W. Taylor, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioners sustained the burden of proving they had a valid capital loss, which would enable them to offset their asserted 1974 income tax deficiency.

II. Whether petitioners were barred from offsetting a 1974 tax deficiency with an asserted 1974 capital loss which was not asserted until March 6, 1980.

FINDINGS OF FACT

1. The petitioners herein, John D. Ohlandt, Jr. and Helen Ohlandt, are husband and wife. They timely filed their joint New York State Income Tax Nonresident Return for the year 1974.

2. The timely notices of deficiency herein, dated April 12, 1978 assert an income tax deficiency against petitioner John D. Ohlandt, Jr. in the sum of \$7,099.35 and an income tax deficiency against petitioner Helen Ohlandt in the sum of \$1,238.85.

3. The Statement of Audit Changes dated March 1, 1978 states:

"As the result of field audit for the above-indicated year [1974] additional tax is due in accordance with attached schedules as follows:

	<u>Husband</u>	<u>Wife</u>	
Personal Income Tax	\$6120.12	\$928.37	\$7048.49
Minimum Income Tax	\$ 979.23	\$310.48	\$1289.71"
		[Total Due	\$8338.20]

4. The schedule of audit adjustments are as follows:

	<u>Husband</u>	<u>Wife</u>
<u>Ordinary Income:</u>		
P/S Distribution from Stuart Bros.		
Per Audit	\$ 3135.93	
Reported on Return	<u>-0-</u>	\$ 3135.93
Ordinary Portion of Lump Sum		
Distribution from Employer is		
Deemed Income from New York Sources	\$ 2030.16	
Reported on Return	<u>-0-</u>	\$ 2030.16
<u>Capital Gains:</u>		
Gain on the Sale of New York		
Residence	\$43000.00	
Reported on Return	<u>-0-</u>	
Adjustment	\$43000.00	
Less Deduction @ 50%	<u>21500.00</u>	\$10750.00
Lump sum Distribution from		
Employer is Deemed Income		
from New York Sources	\$46016.94	
Reported on Return	<u>-0-</u>	
Adjustment	46016.94	
Less Deduction @ 50%	<u>23008.47</u>	\$23008.47
Distribution of Long Term Capital		
Gain per Audit of Stuart Bros.	\$ 7.45	
Reported on Return	<u>-0-</u>	
Less Deduction @ 50%	\$ 3.72	\$ 3.72

Modifications:

Long Term Capital Gain @ 20% (Wife)		
20% x \$10,753.73 =	\$ 2150.75	
Reported on Return	<u>-0-</u>	\$ 2150.75

Long Term Capital Gain @ 20% (Husband)		
20% x \$33758.47 =	\$ 6751.70	
Report on Return	<u>-0-</u>	\$ 6751.70

Unincorporated Business Tax Per		
Audit of Stuart Bros.	\$ 293.33	
Reported on Return	<u>-0-</u>	\$ 293.33

5. The Audit Division recomputed petitioners' tax on IT-209 rather than IT-203 because it necessitated a lower yield.

6. Petitioners did not personally attend the hearing. Their only witness was their representative.

7. Petitioners assert they had subordination agreements which they entered into in July, 1974. The agreements were with the New York Hanseatic Corporation, a New York corporation. As of December 31, 1974, it is asserted, the loans were uncollectable. The amount of the asserted loss of petitioner John D. Ohlandt is \$175,000.00 and the amount of the asserted loss for petitioner Helen Ohlandt is \$70,130.50. Petitioners did not include the loss on their original State return.

8. Petitioners did not offer any real proof to substantiate their asserted loss.

9. Petitioners did not put in evidence a copy of their 1974 Federal tax return.

CONCLUSIONS OF LAW

A. That section 689 of the Tax Law provides in part as follows:
"Section 689. Petition to Tax Commission

(e) Burden of proof. In any case before the tax commission under this article, the burden of proof shall be upon the petitioner..."

B. That petitioners have failed to sustain the burden of proving they had a valid capital loss, which would enable them to offset their 1974 income tax deficiency.

C. That the issue, whether petitioners were barred from offsetting a 1974 tax deficiency with an asserted 1974 capital loss which was not asserted until March 6, 1980, is moot.

D. That the petition herein is denied and the notices of deficiency dated April 12, 1978 are sustained, together with such interest as may be lawfully due.

DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER