

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard M. & Barbara K. Peekema :
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. :

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Richard M. & Barbara K. Peekema, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard M. & Barbara K. Peekema
4817 Wellington Park Dr.
San Jose, CA 95136

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
20th day of November, 1981.

Bernie A. Hagelund

J. Vredenburg

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

November 20, 1981

Richard M. & Barbara K. Peekema
4817 Wellington Park Dr.
San Jose, CA 95136

Dear Mr. & Mrs. Peekema:

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	:
RICHARD M. PEEKEMA and BARBARA K. PEEKEMA	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, Richard M. Peekema and Barbara K. Peekema, 4817 Wellington Park Drive, San Jose, California 95136, 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 No. 19888).

On November 15, 1979, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether petitioner Barbara K. Peekema shall be recognized as a partner, for income tax purposes, in the partnership of Peekema Brothers.

FINDINGS OF FACT

1. Petitioners, Richard M. Peekema and Barbara K. Peekema, filed a resident New York State Combined Income Tax Return for 1974. On said return, petitioners allocated earnings of \$9,666.43, derived from Peekema Bros., a partnership, on the basis of 50 percent attributable to each petitioner.

2. On May 23, 1977, the Audit Division issued a Notice of Deficiency against petitioner Richard M. Peekema, asserting personal income tax of \$590.06, plus interest of \$105.53, less the overpayment due from petitioner

Barbara K. Peekema of personal income tax of \$346.29, plus interest of \$61.93, leaving a net balance due of \$287.37. The Notice was issued on the grounds that petitioner Barbara K. Peekema was not listed as a partner in the partnership agreement and, therefore, no portion of the partnership income was attributable to her.

3. The partnership known as Peekema Brothers was formed by written agreement between petitioner Richard M. Peekema and George Peekema, brothers. The brothers verbally agreed that their respective wives were also to be partners.

4. The partnership for subject year operated a farm in California on land which petitioners held as joint tenants as to an undivided half interest. The equipment used in operation of the partnership farm was held by petitioners as tenants in common to an undivided one-half interest.

5. Capital was a material income producing factor in the partnership of Peekema Brothers.

CONCLUSIONS OF LAW

A. The indicia of a partnership are that the parties must have joined together to carry on a trade or venture for their common benefit, each contributing property or services, and having a community of interest in the profits. It is essential that the parties jointly contribute thereon in the sense of putting into it something in the nature of property, services, conduct or investment tending to constitute a community of interest (Seaboard Surety Co. v. H&R Construction Corp., 153 F. Supp. 641).

B. That although finding of fact 4 establishes that petitioner Barbara K. Peekema owned in part certain assets used in the partnership, the petitioners have failed to show that such assets were acquired from funds which

originated with her. That, "when she does not share in the management and control of the business, contributes no vital additional service...it is competent to take these circumstances into consideration in determining whether there is any real partnership for income tax purposes" (Comm. v. Tower, 327 U.S. 280).

C. That in determining if a valid partnership for income tax purposes exists between a husband and wife, the test laid down by the Supreme Court is "...whether, considering all the facts - the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested parties, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purpose for which it was used and any other facts throwing light on their true intent - the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise" (Comm. v. Culbertson, 337 U.S. 741-743).

D. That petitioners, Robert M. Peekema and Barbara K. Peekema, have failed to sustain the burden of proof pursuant to sections 722 and 689(e) of the Tax Law to establish that petitioner Barbara K. Peekema was a partner for income tax purposes in the partnership of Peekema Brothers.


E. That the petition of Richard M. Peekema and Barbara K. Peekema is denied, and the Notice of Deficiency issued on May 23, 1977 is sustained, together with such additional interest as may be lawfully owing.

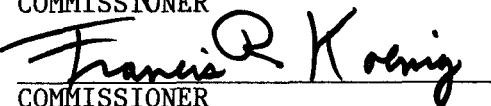
DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER