

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank Perry :
: 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 1973

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 April, 1981, he served the within notice of Decision by certified mail upon Frank Perry, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank Perry
c/o Gelfand & Radler
136 E. 57th St.
New York, NY 10022

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 April, 1981.

Carmie A. Hageland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank Perry :
: 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 1973 :

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 April, 1981, he served the within notice of by certified mail upon Sidney Gelfand 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. Sidney Gelfand
136 E. 57th St.
New York, NY 10022

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
3rd day of April, 1981.

Cornelia A. Hagelund

J. Vredenburg

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

April 3, 1981

Frank Perry
c/o Gelfand & Radler
136 E. 57th St.
New York, NY 10022

Dear Mr. Perry:

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
Sidney Gelfand
136 E. 57th St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRANK PERRY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

Petitioner, Frank Perry c/o Gelfand & Radler, 136 East 57th Street, New York, New York 10022, 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 1973 (File No. 15809).

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 April 13, 1978 at 1:30 P.M. Petitioner appeared by Sidney Gelfand, CPA. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner's \$65,000.00 payment to Eleanor Perry (pursuant to a separation agreement) was properly disallowed as a deduction by the Audit Division.

FINDINGS OF FACT

1. Petitioner, Frank Perry, filed a New York State Income Tax Resident return for the year 1973, on which he deducted \$91,000.00 as alimony payments.

2. On May 24, 1976, the Audit Division issued a Notice of Deficiency to petitioner indicating tax due of \$8,752.31, plus interest for 1973. The deficiency was based on disallowance of \$65,000.00 of the \$91,000.00 claimed

as alimony payments and inclusion of a modification on capital gains. (Section 612(b)(11) of the Tax Law).

3. Petitioner has been a producer-director of motion pictures since 1961. Eleanor Perry (his former wife) is a screen writer. Petitioner and Eleanor Perry were legally separated in 1971 and divorced in 1973. Prior to their separation, petitioner produced screenplays written by Mrs. Perry.

4. Before their separation, Universal Pictures had agreed to pay Eleanor Perry \$65,000 for the screenplay, Expensive People, if it were produced by petitioner. When petitioner and Mrs. Perry planned their separation, both considered it to be impossible for them to work together on Expensive People. Given these circumstances, Mrs. Perry insisted on the inclusion of Section 5 in the Separation Agreement executed by Mrs. Perry and petitioner on July 12, 1971 (hereinafter "Separation Agreement"). Section 5 of the Separation Agreement provides as follows:

"5. It is acknowledged by the Husband that the Wife has written for Universal Pictures a first draft screenplay based on a literary property entitled EXPENSIVE PEOPLE and that the Wife has not received compensation of \$65,000 for such first draft screenplay, to which the Wife feels entitled. The Husband acknowledges responsibility for the failure of the Wife to receive such \$65,000.

A. The Wife undertakes to use her best efforts to (i) obtain as great a payment as possible from Universal Pictures or another motion picture company for such screenplay, or (ii) attempt to work out a transaction involving a producer and/or director or producer/director other than the Husband for the production of the picture based upon the Wife's screenplay which, if such transaction were consummated, would provide the Wife with as great a payment as possible for such screenplay.

B. In the event that the Wife, despite such best efforts, shall be unable within a period of two years from the Closing to obtain payment of \$65,000 for the screenplay, the Husband agrees to pay to the Wife additional alimony equal to the amount by which (i) \$65,000, shall exceed (ii) any amount received by the Wife pursuant to Paragraph 5(A) above. Such additional alimony shall be payable if the Wife shall be living two years after the Closing, whether or not the Wife shall have remarried."

5. Instead of producing Expensive People, petitioner went on to produce the film Play It As It Lays, for which he received substantial income.

6. Petitioner believed that had he not made the arrangements provided for in Section 5 of the Separation Agreement, Mrs. Perry would have had grounds for suing him for breach of contract. Such an action (in petitioner's view) would do him major damage within the movie industry.

7. Eleanor Perry was not able to sell the screenplay Expensive People. Pursuant to Section 5 of the Separation Agreement, petitioner paid her \$65,000.00 in 1973.

CONCLUSIONS OF LAW

A. That the payment by petitioner to Eleanor Perry of \$65,000.00 cannot be treated as alimony, since it was not in the nature of a support obligation arising from a marital relationship.

B. That petitioner, Frank Perry, was in the business of producing and directing movies and that Eleanor Perry was in the business of writing screenplays for movies. Because of professional and personal differences, petitioner withdrew from the project to produce and direct the screenplay Expensive People written by Eleanor Perry and, instead, directed another film. As a result, Eleanor Perry was not paid \$65,000.00 by Universal Pictures, an amount she would have received had she and petitioner continued their professional and personal relationship. Fearing a possible lawsuit which would damage his professional reputation in the movie industry, petitioner agreed to the terms of Section 5 of the Separation Agreement. Pursuant to the terms of the Separation Agreement, petitioner paid Eleanor Perry \$65,000.00 in 1973.

C. That the payment of \$65,000.00 by petitioner to Eleanor Perry constituted a business expense which petitioner is entitled to take as a deduction. Accordingly, the Audit Division is directed to modify the Notice of Deficiency

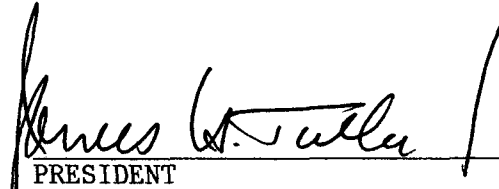
issued May 24, 1976 by allowing the aforementioned amount as a deduction in computing total New York income.

D. That the petition of Frank Perry is granted to the extent provided for in Conclusion of Law "C" and is in all other respects denied and the Notice of Deficiency as modified is sustained.


DATED: Albany, New York

APR 3 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER