

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Allan A. & Paula Pines :

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 13th day of March, 1981, he served the within notice of Decision by certified mail upon Allan A. & Paula Pines, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allan A. & Paula Pines
11 Fifth Ave.
New York, NY 10003

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
13th day of March, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax :
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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 13th day of March, 1981, he served the within notice of Decision by certified mail upon Martin Galuskin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

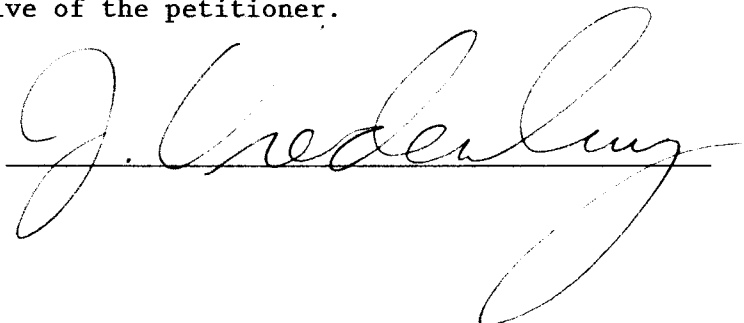
Mr. Martin Galuskin
Burck, Milgrom & Sussman
330 Turnpike Rd., Box F
E. Brunswick, NJ 08816

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
13th day of March, 1981.





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

March 13, 1981

Allan A. & Paula Pines
11 Fifth Ave.
New York, NY 10003

Dear Mr. & Mrs. Pines:

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
Martin Galuskin
Burck, Milgrom & Sussman
330 Turnpike Rd., Box F
E. Brunswick, NJ 08816
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALLAN A. PINES and PAULA PINES : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972.

Petitioners, Allan A. Pines and Paula Pines, 11 Fifth Avenue, New York, New York 10003, 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. 10389).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1980 at 10:45 A.M. Petitioners appeared by Martin Galuskin, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether a distributive share of partnership income was properly reported.

FINDINGS OF FACT

1. Petitioners, Allan A. Pines and Paula Pines, timely filed a joint New York State Income Tax Nonresident Return for the year 1972, on which a distributive share of partnership income was reported. The distributive share of partnership income reported was in accordance with a New York State Non-resident Partner Allocation Schedule issued by the partnership of Stein and Rosen.

2. On April 11, 1975, the Income Tax Bureau issued a Notice of Deficiency for \$1,708.68, plus interest of \$126.73, for the year 1972, along with an explanatory Statement of Audit Changes which indicated, in part:

"Based on the prior audit of the partnership returns of Stein & Rosen, your distributive share of such partnership income is allocated to New York on a basis of 74.88% for fiscal year ending 1/31/72 and 76.28% for fiscal year ending 1/31/73. Since you left the firm before December 31, 1972, your distributive share for the two periods is properly reportable on your 1972 return."

"Unincorporated business taxes are not deductible in computing personal income tax. On your personal income tax return, you failed to increase your Federal income by your distributive share of the unincorporated business tax deductions taken on the partnership returns of Stein & Rosen for fiscal year ending 1/31/72 and 1/31/73."

"Long term capital gains are taxable at 60% in 1972 and a modification is made increasing your Federal income by 20% of your Federal long term capital gain deduction."

"Since state income taxes are not deductible in computing New York income, state income tax refund, included in Federal income, is disregarded in our computation of tax."

The sole issue raised by petitioners was the Bureau's changing of the method of allocating partnership income without a current audit or partnership consent.

3. Petitioner Allan A. Pines became a partner in the law firm of Stein and Rosen in 1971 and remained until December 31, 1972, when he resigned.

4. The partnership of Stein and Rosen allocated its income and expenses within and without New York State in a manner determined in accordance with its own books and records. The New York State partnership returns filed for the fiscal years ending January 31, 1972 and January 31, 1973 utilized this method of allocation pursuant to 20 NYCRR 131.13(a) which was reflected on the items of income, loss and deductions distributed to each partner.

5. Sometime in 1964, the Income Tax Bureau audited the New York State Partnership Return of Stein and Rosen for a previous fiscal year. The Bureau rejected the allocation method utilized and replaced it with the three factor method of allocating income pursuant to 20 NYCRR 131.13(b).

6. The Income Tax Bureau did not examine or audit the books and records of Stein and Rosen for the fiscal years ending January 31, 1972 and January 31, 1973, but issued a deficiency for these fiscal years based on the results of the 1964 audit. The worksheets of the audit conducted in 1964 were not available for examination. Information as to whether the partnership of Stein and Rosen consented, or conceded to the results of the 1964 audit, or to the changes imposed for the fiscal years ending in 1972 and 1973, was not available.

7. Petitioners contended that the books and records of the law firm of Stein and Rosen accurately reflected the items of income, gain, loss and deductions attributable within and without New York State in a fair and equitable manner.

CONCLUSIONS OF LAW

A. That the changing and/or denial of a method of allocating income based solely on the results of a previous audit conducted pursuant to books, records, facts and circumstances, existing in a previous year, is arbitrary, capricious and contrary to the meaning and intent of section 681(a) of the Tax Law. (Petition of Ralph Dolgoff, N.Y.S.T.C., October 3, 1980; Petition of Harry Sotsky and Rae Sotsky, N.Y.S.T.C., May 23, 1980.)

B. That the petition of Allan A. Pines and Paula Pines is granted to the extent that the distributive share of partnership income is allowed as reported on their New York State Income Tax Nonresident Return filed for the year 1972.

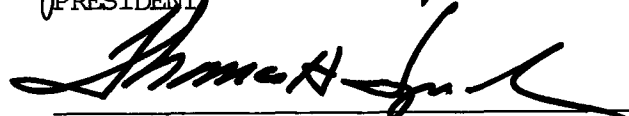
C. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued April 11, 1975; and that, except as so granted, the petition is in all other respects denied.

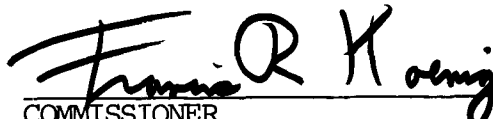
DATED: Albany, New York

MAR 13 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER