

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

David G. Baird :
and Mildred B. Baird :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law for the :
Years 1960-1964, 1968 & 1969. :

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 6th day of October, 1982, he served the within notice of Decision by certified mail upon David G. Baird and Mildred B. Baird, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

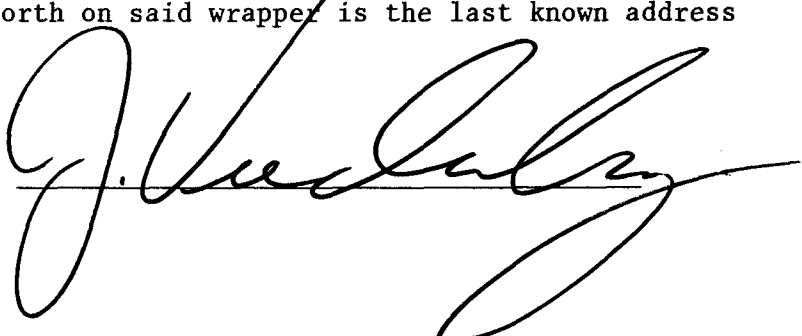
David G. Baird
and Mildred B. Baird
28 Prospect Ave.
Montclair, NJ 07042

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
6th day of October, 1982.

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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Years 1960-1964, 1968 & 1969. :

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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Sidney Meyers the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

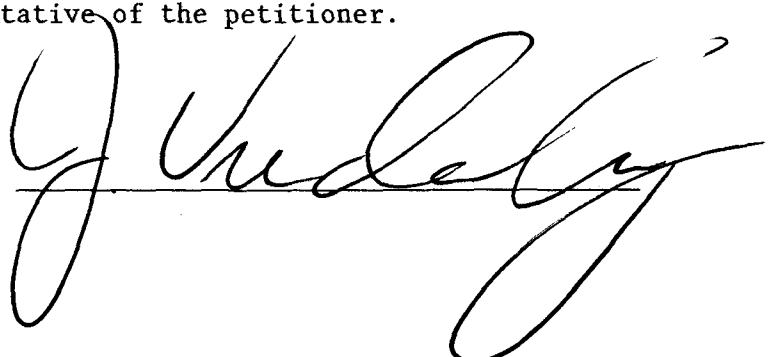
Sidney Meyers
51 Chambers St.
New York, NY 10007

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
6th day of October, 1982.

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OATHS PURSUANT TO TAX LAW
SECTION 174



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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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Lawrence E. Brinn, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence E. Brinn
The Sherry Netherland
781 Fifth Ave.
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
6th day of October, 1982.

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

October 6, 1982

David G. Baird
and Mildred B. Baird
28 Prospect Ave.
Montclair, NJ 07042

Dear Mr. & Mrs. Baird:

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 & 722 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sidney Meyers
51 Chambers St.
New York, NY 10007
and
Lawrence E. Brinn
The Sherry Netherland
781 Fifth Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DAVID G. BAIRD and MILDRED B. BAIRD	:	DECISION
	:	
for Redetermination of Deficiencies or for	:	
Refunds of Personal Income Taxes and	:	
Unincorporated Business Taxes under Articles	:	
22 and 23 of the Tax Law for the Years 1960	:	
through 1964, 1968 and 1969.	:	

Petitioners, David G. Baird and Mildred B. Baird, 28 Prospect Avenue, Montclair, New Jersey 07042, filed petitions for redetermination of deficiencies or for refunds of personal income taxes and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1960 through 1964, 1968 and 1969 (File Nos. 10104, 10105, 16444, 16445, 16446 and 16447).

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 April 27, 1979 and was continued on August 16, 1979, September 26, 1979 and September 27, 1979. Petitioners appeared by Sidney Meyers, Esq. The Audit Division appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUES

I. Whether the activities of David G. Baird in arranging corporate mergers and engaging in other financial work constituted an unincorporated business.

II. Whether such activities were carried on both within New York and without New York for purposes of allocation of income for both personal income tax and unincorporated business tax.

III. Whether losses from certain oil investments can be deducted by David G. Baird for both personal income tax and unincorporated business tax purposes.

FINDINGS OF FACT

1. (a) A Notice of Deficiency was issued on January 22, 1968 against David G. Baird for the years 1960 through 1963 for additional personal income tax of \$274,911.44, unincorporated business tax of \$94,407.53, penalties, pursuant to section 685(a) of the Tax Law, of \$23,601.88 and penalties pursuant to section 685(c) of the Tax Law, of \$197.94 and interest of \$112,834.39, for a total of \$505,953.18.

(b) A Notice of Deficiency was issued on January 22, 1968 against Mildred B. Baird for additional personal income tax for the years 1960 through 1963 in the amount of \$6,559.39, plus penalty, pursuant to section 685(c) of the Tax Law, of \$123.20 and interest of \$1,815.10, for a total of \$8,497.69.

(c) A Notice of Deficiency was issued on April 10, 1968 against Mildred B. Baird for additional personal income tax of \$114.32 for the year 1964, plus interest of \$20.49, for a total of \$134.81.

(d) A Notice of Deficiency was issued on October 6, 1975 against David G. Baird and Mildred B. Baird for additional personal income tax for the years 1968 and 1969 in the amount of \$88,194.94, plus penalties, pursuant to section 685(b) of the Tax Law, of \$4,409.75 and interest of \$32,307.97, for a total of \$124,912.66.

(e) A Notice of Deficiency was issued on October 6, 1975 against David G. Baird for unincorporated business tax for 1968 and 1969 in the amount of \$86,220.44, plus interest of \$30,900.99 and penalties, pursuant to section 685(a), 685(a)(1), 685(a)(2) and section 685(b) of the Tax Law, of \$36,721.73, for a total of \$153,843.16.

2. (a)(1) The Notice of Deficiency for 1960 through 1963 against David G. Baird includes both personal income tax and unincorporated business tax which was asserted as a result of a field audit.

(a)(2) For 1962, the personal income tax as stated in the notice issued to David G. Baird is \$102,785.94. This is computed on a corrected taxable income of \$1,034,384.41. The taxable income is composed of business income of \$770,107.84 (made up of receipts as a financial consultant of \$655,421.37, fees as a guarantor of \$31,269.73, commissions from insurance brokerage of \$75,678.32 and interest income of \$7,738.42 received on loans outstanding), a distributive share of partnership income from Baird & Co. of \$244,396.94 (made up of ordinary income of \$148,058.20, interest of \$2,437.50, dividends of \$1,442.61, "UBT modification" of \$5,351.89, long-term gains of \$54,257.64 and short-term gains of \$32,849.10), New York director's fees of \$24,021.39 and income from Marsh & McLennan, Inc. of \$4,283.22. Deductions of \$7,224.98 and exemptions totaling \$1,200.00 were allowed.

(a)(3) For 1962, unincorporated business tax due from David G. Baird, as stated in the Notice of Deficiency is \$30,216.31. This is computed on unincorporated business taxable income of \$755,407.84. The unincorporated business gross income of \$770,107.84 is made up of receipts as a financial consultant of \$655,421.37, fees as a guarantor of \$31,269.73, commissions from insurance brokerage of \$75,678.32 and interest received on loans of \$7,738.42. Deductions were allowed for business expenses of \$2,500.00, contributions of \$2,200.00, an allowance for services in the amount of \$5,000.00 and an exemption in the amount of \$5,000.00.

(b) The computation of the amount of the deficiency for 1960 through 1963 against Mildred B. Baird is not shown in the record.

(c) The deficiency for 1964 against Mildred B. Baird is based upon the adding back to income of the unincorporated business tax deduction taken on the partnership return of Baird & Co.

(d) The basis for the deficiency for 1968 and 1969 against David G. Baird and Mildred B. Baird for personal income tax is stipulated to be the same in principle as the deficiencies for 1960 through 1963.

(e) The basis for the 1968 and 1969 deficiency against David G. Baird for unincorporated business tax is stipulated to be the same in principle as the deficiencies for 1960 through 1963.

(f) Director fees and fees received from Marsh & McLennan, Inc. were not included in business income held subject to unincorporated business tax for any year at issue. Said fees were held subject to personal income tax to the extent derived from corporations that held directors meetings in New York State.

3. Mr. and Mrs. Baird were residents of Montclair, New Jersey. They were not residents of New York. Mr. Baird was not able to testify because of his health and advanced age. Mrs. Baird did not testify.

4. Both Mr. and Mrs. Baird were partners in the firm of Baird & Co. located at 65 Broadway, New York City. The firm engaged in a general securities business and was a member of both the New York and American Stock Exchanges. The firm's accounting period was for a fiscal year ending May 31st.

5. Mr. Baird engaged in many income producing activities other than the activities of Baird & Co. Mr. Baird's activities encompassed, in the words of one witness, "anything you could think of, any chance there was to make a dollar". This included locating buyers and sellers of business corporations and arranging mergers, arbitrating building disputes and arranging loans.

6. Mr. Baird's activities as a financial consultant had continued from at least 1950 and the fees from that source in each year were substantial.

7. Mr. Baird hired and paid for a staff of employees to aid him in the partnership business as well as in his personal business.

8. Mr. Baird would conduct his financial business at times by meeting people in hotels in New York City and at times by making telephone calls from pay telephones in New York City. Petitioners do not now claim that Mr. Baird maintained an office at his New Jersey home. Although petitioners argued that Mr. Baird did not conduct his financial business at the offices of Baird & Co., no evidence was adduced to support that conclusion.

9. The testimony that Mr. Baird would do all of his business from public telephones and not from any office is, on the record, incredible.

10. The testimony that Mr. Baird's presence was needed at all times at the office of Baird & Co. in order to personally supervise and approve of every stockmarket transaction ordered by a customer is incredible.

11. There is not sufficient evidence in the record to show that Mr. Baird retired as a member of Baird & Co. at the end of 1967 nor is there any evidence to show that Mr. Baird did not receive a distributive share of partnership income from Baird & Co. for 1968 and 1969.

12. Mr. Baird had substantial investments in oil properties. His investments were in the form of a partial share of the proceeds from the sale of oil once it was produced and sold. He had no interest in the underlying real estate which was in all cases outside New York. The oil losses for tax purposes approximated \$800,000.00 to \$1,200,000.00 for each of the years 1960 through 1963.

13. Mr. Baird had signed a series of consents to extend the periods of limitation for personal income tax for the years 1960 through 1963. These were signed on February 28, 1964, February 15, 1965, February 2, 1966 and February 20, 1967.

14. Petitioner David G. Baird did not show reasonable cause for his failure to file unincorporated business tax returns.

CONCLUSIONS OF LAW

A. That the Notice of Deficiency for personal income tax against Mildred B. Baird for 1960 and 1961 is barred by the statute of limitations, since separate returns were filed for said years and she did not sign a consent fixing period of limitations upon assessment; however, although the statutory period of limitation upon assessment also expired for Mildred Baird for 1962 and 1963, and a waiver was not executed by her, the determination of the deficiency for 1962 and 1963 was proper as to David G. Baird only, as the waiver extended petitioner David G. Baird's joint and several liability on their joint return (Magaziner, 16 TCM 129).

B. Petitioner Mildred Baird failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the Notice of Deficiency issued for 1964 was erroneous. The modification for unincorporated business income taxes is required pursuant to section 612(b)(3) of the Tax Law.

C. That petitioner David G. Baird failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that his activities in producing "fee" income were carried on anywhere except in New York State; that said activities were not casual or isolated in nature but rather frequent and continuous so as to constitute the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

D. That losses derived from oil leases were attributable to "real property" located outside New York State and are not considered derived from sources within this State within the meaning and intent of section 632(b) of the Tax Law and NYCRR 131.2; that said losses do not constitute losses for unincorporated business tax purposes within the meaning and intent of section 707(e) of the Tax Law and 20 NYCRR 287.1, Question 82, a former regulation issued under Article 16A of the Tax Law. (See Matter of J & L Partnership, State Tax Commission, March 13, 1981).

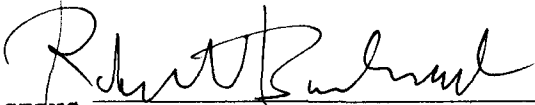
E. That petitioners failure to file unincorporated business tax returns for 1960 through 1963 and for 1968 and 1969 was not due to reasonable cause; therefore, the penalties imposed under sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law are sustained.

F. That the petitions of David G. Baird and Mildred Baird are granted to the extent shown in Conclusion of Law "A" supra; and that, except as so granted, the petitions are in all other respects denied.

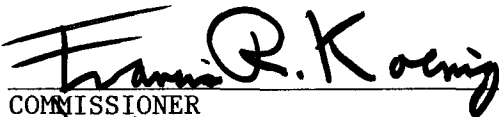
DATED: Albany, New York

OCT 06 1982


STATE TAX COMMISSION



ACTING PRESIDENT



COMMISSIONER



COMMISSIONER