

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :  
of :  
Arthur M. Becker & Faye S. Becker :

AFFIDAVIT OF MAILING

for Redetermination of Deficiencies or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law for the Years 1975 and 1976 and New York City :  
Nonresident Earnings Tax under Chapter 46, Title U :  
of the Administrative Code of the City of New York :  
for the Year 1976. :

State of New York  
County of Albany

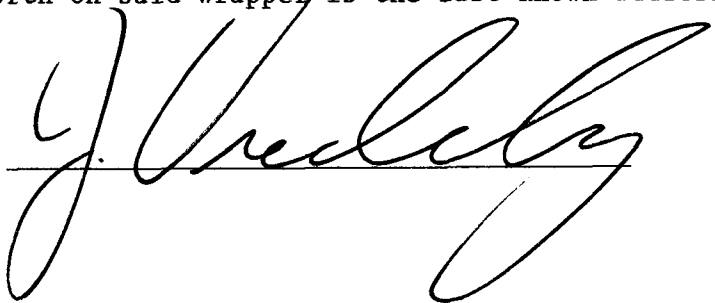
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Arthur M. Becker & Faye S. Becker, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur M. Becker & Faye S. Becker  
8800 Bradley Blvd.  
Bethesda, MD 20034

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

STATE OF NEW YORK

STATE TAX COMMISSION

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

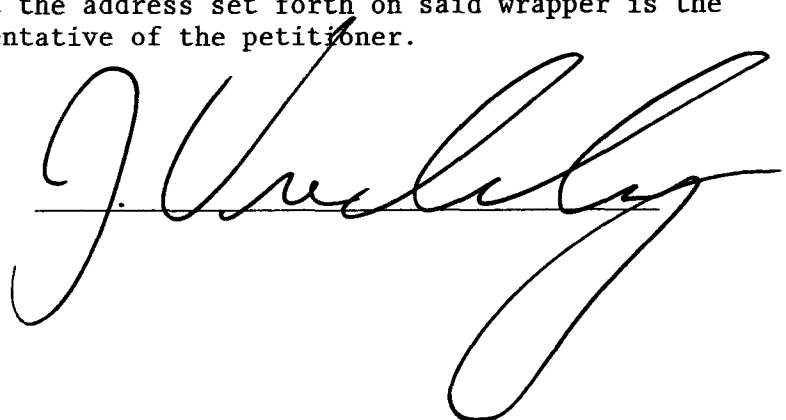
John C. McCoy, Jr.  
Arent, Fox, Kintner, Plotkin & Kahn  
Federal Bar Bldg., 1815 H St., N.W.  
Washington, DC 20006

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

A large, stylized handwritten signature in dark ink, likely belonging to Jay Vredenburg, is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

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

October 6, 1982

Arthur M. & Faye S. Becker  
8800 Bradley Blvd.  
Bethesda, MD 20034

Dear Mr. & Mrs. Becker:

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 and Chapter 46, Title U of the Administrative Code of the City of New York, 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  
John C. McCoy, Jr.  
Arent, Fox, Kintner, Plotkin & Kahn  
Federal Bar Bldg., 1815 H St., N.W.  
Washington, DC 20006  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions  
of  
ARTHUR M. BECKER & FAYE S. BECKER  
for Redetermination of Deficiencies or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1975 and 1976 and  
New York City Nonresident Earnings Tax under  
Chapter 46, Title U of the Administrative Code  
of the City of New York for the Year 1976.

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DECISION

Petitioners, Arthur M. Becker and Faye S. Becker, his wife, 8800 Bradley Boulevard, Bethesda, Maryland 20034, filed petitions for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1975 and 1976 and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1976 (File Nos. 23269 and 30387).

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 December 17, 1981 at 1:15 P.M. Petitioners appeared by Arent, Fox, Kinter, Plotkin & Kahn, Esqs. (John J. McCoy, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Kevin A. Cahill, Esq., of counsel).

ISSUES

I. Whether certain payments to petitioner Arthur M. Becker in 1975 and 1976 constituted distributions of New York partnership income to a nonresident partner subject to New York tax.

II. Whether petitioners had reasonable cause not to file New York State income tax and New York City nonresident earnings tax returns for the tax year 1976.

III. Whether losses not derived from or connected with New York sources are deductible by a nonresident taxpayer in arriving at New York taxable income.

# FINDINGS OF FACT

1. The timely notices of deficiency herein dated March 24, 1978 and April 4, 1980 assert an income tax deficiency against petitioners as follows:

	<u>Additional Tax Due or Tax Deficiencies</u>	<u>Penalty &amp;/or Interest</u>	<u>Balance Due</u>
1975 -	\$ 4,228.03	\$ 697.11	\$ 4,925.14
1976 -	8,391.59	5,516.46	13,908.05
Total	<u>\$12,619.62</u>	<u>\$6,213.57</u>	<u>\$18,833.19</u>

2. In connection with the deficiency for the year 1975, a Statement of Audit Changes dated January 31, 1978 was issued with the following explanation:

"Losses not derived from or connected with New York State sources are not deductible by a nonresident taxpayer in arriving at New York taxable income. Therefore, loss from Lockwood Drive Co. is excluded in determining your New York taxable income.

A retiring partner continues to be a partner for income tax purposes until his interest in the partnership has been completely liquidated. A retirement payment to a retiring partner constitutes a guaranteed payment taxable as ordinary income for New York State tax purposes.

# COMPUTATION:

Ordinary partnership income	\$159,736.00
Retirement payment	25,000.00
Less: Additional 1st year depreciation	(193.00)
Less: Business expenses (\$159,736.00/\$222,236.00 x \$5,629.00)	(4,046.00)
Total	<u>\$180,497.00</u>
New York partnership allocation percentage	90.85%
New York partnership income	<u>\$163,982.00</u>
New York partnership loss - 221 West 82nd Street Co.	(4,091.00)
Adjustment (\$2,500.00 x 90.85%)	(2,271.00)
Total income	<u>\$157,630.00</u>
Unincorporated business tax modification (\$4,807.00 x 90.85%)	4,367.00
Total New York income	<u>\$161,997.00</u>
New York itemized deductions (\$161,997.00/\$187,327.00 x \$22,210.00)	<u>19,207.00</u>

Balance		\$142,790.00	
Personal exemptions (\$1,950.00 x 86.48%)		<u>1,686.00</u>	
Taxable income		\$141,104.00	
New York tax on income		\$ 19,475.60	
Add: Tax surcharge		<u>486.89</u>	
Balance Due		\$ 19,962.49	
Less: Tax previously stated	\$15,804.00		
Refund previously issued	<u>69.54</u>	<u>15,734.46</u>	
ADDITIONAL PERSONAL INCOME TAX DUE			\$4,228.03
		Interest	<u>645.91</u>
		TOTAL DUE	\$4,873.94"

3. In connection with the deficiency for the year 1976, a Statement of Audit Changes dated May 15, 1978 was issued with the following (in part) explanation:

"Section 637(b) of the New York Tax Law provides that in determining the source of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which allocates to a partner the income from a particular office or source.

Accordingly, your income from the partnership Mudge, Rose, Guthrie & Alexander includible in New York adjusted gross income is determined by applying the partnership allocation percentage to retirement payments and interest on capital received from such partnership.

Penalties are imposed under Section 685(a)(1) and (a)(2) for failure to file a return and pay balance due.

The standard deduction and one exemption are allowed in determining your tax liability.

Your New York City nonresident earnings tax liability is shown below.

COMPUTATION:

Retirement payment		\$65,473.88
Interest on capital		<u>3,863.34</u>
Total distributive share		\$69,337.22
Partnership allocation percentage		<u>94.78</u>
New York income		\$65,717.82
Standard deduction		<u>2,000.00</u>
Balance		\$63,717.82
Personal exemption		<u>650.00</u>
Taxable income		\$63,067.82
New York tax on income	\$6,770.17	
Add: tax surcharge	<u>194.25</u>	
New York City nonresident earnings tax	<u>427.17</u>	

BALANCE DUE \$ 8,391.59

Penalties per Section 685(a)(1) and (a)(2)	2,433.54
Interest	771.93
TOTAL DUE	\$11,597.06"

4. The petitioners herein are Arthur M. Becker and his wife Faye S. Becker.

5. During the years in issue petitioners were residents of the State of Maryland.

6. For a period beginning several years prior to January 1, 1975 and ending June 30, 1975, petitioner Arthur M. Becker was a full partner of Mudge, Rose, Guthrie & Alexander ("Mudge, Rose"), a law firm having its principal office and place of business in New York City. He worked out of Mudge, Rose's Washington, D.C. office.

7. Petitioner Faye S. Becker neither had nor is alleged to have had any taxable New York State or New York City income for the years in issue.

8. On or about December 7, 1977, petitioners filed an amended Form IT-209 for 1975. This amended return was filed after petitioners learned that the losses from a real estate partnership (Lockwood Drive Co.) doing business in Maryland had been erroneously deducted on the original Form IT-209. The amended return reflected a total tax of \$17,321.00 and the additional \$1,517.00 due was paid at the time of filing. Accordingly, Issue No. III, herein, has been settled and is no longer in contention.

9. The deficiency issued March 24, 1978, for tax year 1975, failed to allow petitioners credit for \$1,517.00 paid with the amended return filed per Finding of Fact "8" supra.

10. Petitioner Arthur M. Becker attained the age of 65 years prior to December 31, 1974; he retired from Mudge, Rose effective June 30, 1975.

11. Between July 1, 1975 and December 31, 1975 Arthur M. Becker received pension payments from Mudge, Rose totaling \$25,000.00 and during 1976 he received pension payments totaling \$65,473.88. The pension payments were received pursuant to Article VII paragraph 5(a)(1) of the Mudge, Rose partnership agreement.

12. Article VII paragraph 5(a)(1) of the partnership agreement provided that any partner who retired on December 31st of the year in which he reached the age of 65, or on the last day of any month thereafter, would be entitled to a pension for life. The amount of such pension was to be based on the lesser of \$200,000 or the average of the retiring partner's highest annual earnings from the firm for any five of the ten years preceding the year in which he became 65. During the twelve months following retirement, the partner was to receive 30 percent of this base, in the second twelve months, 25 percent, in the third twelve month period, 20 percent, and thereafter in each succeeding twelve month period, 15 percent.

13. The statements of audit changes assert that 90.85 percent of the 1975 pension payments were subject to New York State income tax and 94.78 percent of the 1976 pension payments were subject to New York State and New York City income taxes.

14. The petition filed for 1976 indicated that if the Notice of Deficiency was sustained and the retirement income was held subject to New York State income tax, petitioners should likewise be allowed to itemize their New York deduction as was done for Federal tax purposes. Additionally, the petition requested that the deficiency be recomputed on the basis of a joint return or a combined separate return, whichever resulted in a lower tax. No testimony or evidence concerning the above was adduced at the hearing.



15. Arthur M. Becker did not file a New York State and New York City income tax return for the year 1976 on the advice of counsel.

CONCLUSIONS OF LAW

A. That Treasury Regulation Section 1.707-1(c) provides that guaranteed payments are regarded as a partner's distributive share of ordinary income; therefore, the guaranteed payments are considered to be a distribution of partnership income and accordingly are subject to New York State personal income tax to the extent such distribution is derived from New York sources (20 NYCRR 134). Additionally, such guaranteed payments are subject to New York City nonresident earnings tax to the extent such distribution is derived from New York City sources (U46-2.0).

B. That petitioner Arthur M. Becker's failure to file a New York State and New York City tax returns for the tax year 1976 was due to reasonable cause; therefore, the penalties are cancelled.

C. That the petitions herein are granted to the extent indicated in Conclusion of Law "B" and Finding of Fact "9", and that except as so granted, they are in all other respects denied.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

ACTING  
PRESIDENT

COMMISSIONER

COMMISSIONER