

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kenneth & Gunhilde R. Carroad :
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 Years :
1963, 1966 & 1967. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of April, 1982, she served the within notice of Decision by certified mail upon Kenneth & Gunhilde R. Carroad, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenneth & Gunhilde R. Carroad
40 Worth St.
New York, NY 10013

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
2nd day of April, 1982.

Connie A. Hagelund

Kathy Pfaffenbach

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

April 2, 1982

Kenneth & Gunhilde R. Carroad
40 Worth St.
New York, NY 10013

Dear Mr. & Mrs. Carroad:

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

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	:	
	:	
KENNETH CARROAD and GUNHILDE R. CARROAD	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1963, 1966 and 1967.	:	

Petitioners, Kenneth Carroad and Gunhilde R. Carroad, 40 Worth Street, New York, New York 10013, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1963, 1966 and 1967 (File No. 01040).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1976 at 1:15 P.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (James A. Scott, Esq., of counsel). The formal hearing was continued before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 28, 1977 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether the value of notes received as payment for real estate was previously included by the Income Tax Bureau in a bad debt loss allowed in 1958.

II. Whether New York State is bound, under Federal conformity, to accept figures contained on a Federal return or Federal audit in determining New York income.

FINDINGS OF FACT

1. Petitioners, Kenneth Carroad and Gunhilde R. Carroad, filed New York State income tax resident returns for the years 1963, 1966 and 1967.

2. On April 13, 1970, the Income Tax Bureau issued a Notice of Deficiency to petitioners, indicating a deficiency of \$13,174.00, plus interest, for the tax years 1963, 1966 and 1967.

3. Petitioner Kenneth Carroad had made loans to Ferro-Co Corporation ("Ferro") and various of its subsidiaries. For 1957 Mr. Carroad claimed business bad debts relating to Ferro and its subsidiaries of \$1,126,687.29. Ferro and its subsidiaries went into Chapter XI bankruptcy in September of 1958. The Income Tax Bureau took the position that these debts did not become bad until 1958, and thus required that petitioners take them as bad debts for 1958 rather than 1957. This resulted in a net operating loss for 1958 which was carried forward to tax years 1960, 1961, 1962 and 1963.

4. Petitioners are trustees of the Andrea L. Carroad Trust and the Martha P. Carroad Trust ("trusts" or "trust funds") created by the parents of petitioner Gunhilde R. Carroad for the benefit of petitioners' children. Mr. Carroad borrowed over \$600,000.00 from the trust funds. He used the funds for (among other purposes) making loans to Ferro or its subsidiaries.

5. Mr. Carroad states that in 1957, he sold three real estate parcels to the trust funds, taking back in return the notes or claims of the trusts against Ferro or its subsidiaries. Petitioners claim that the notes are worthless and that the purpose of the transaction was to enable Mr. Carroad to make

partial restitution to the trust funds. Petitioners further contend that there was never any intention that these notes be honored by the trust funds and that petitioners should be allowed to treat the transactions as bad debts.

6. Petitioners argues that the notes received as payment for the real estate were never included by the Income Tax Bureau in the bad debt allowed in 1958. Therefore, the 1958 net operating loss would be increased and the additional net operating loss carried forward would eliminate all of the proposed deficiencies. No evidence was submitted by petitioners to show the value of the notes was not included in the bad debt loss allowed previously by the Income Tax Bureau.

7. Petitioner also argues that the audit adjustment drastically changes the Federal income figures reported on Federal income tax returns and on Federal audit and that such adjustments are in contravention of the principle, purpose and statutory edict of conformity of the New York State Tax Law.

CONCLUSIONS OF LAW

A. That the burden of proof in this type of case is on the petitioner (section 689(e) of the Tax Law). As to the circumstances surrounding the 1957 sale by Mr. Carroad of real estate parcels to the trust funds, petitioners have failed to meet this burden to show that the value of the notes received as payment for the real estate was not previously included by the Income Tax Bureau in the bad debt loss allowed in 1958.

B. That the Tax Law gives the Tax Commission the power to make any audit changes in ascertaining the correctness of any return (section 697(b) of the Tax Law). Further, the Tax Commission is not required to accept as correct any (Federal) changes in taxable income but may conduct an independent audit or investigation (20 NYCRR 153.4). Thus, the Tax Commission is not bound by

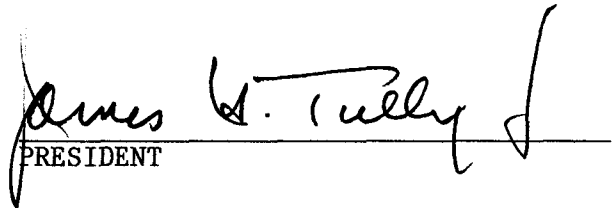
conformity to accept Federal income tax figures reported on Federal income tax returns filed or adjustments made by Federal audit.

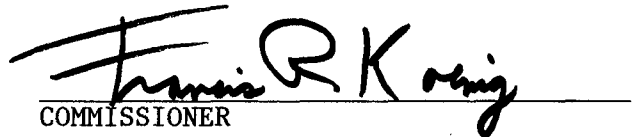
C. That the petition of Kenneth Carroad and Gunhilde R. Carroad is denied and the Notice of Deficiency dated April 13, 1970 is sustained.

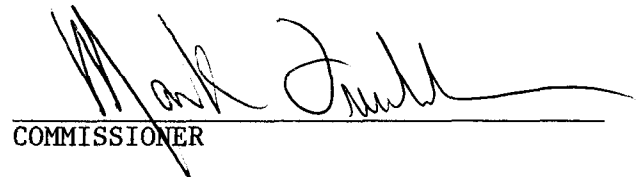
DATED: Albany, New York

STATE TAX COMMISSION

APR 02 1982


PRESIDENT


COMMISSIONER


COMMISSIONER