

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Irving Druckman

:
:
: 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 Years :
1972, 1973 & 1974.

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 26th day of November, 1982, he served the within notice of Decision by certified mail upon Irving Druckman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving Druckman
3333 C Henry Hudson Pkwy.
New York, NY 10463

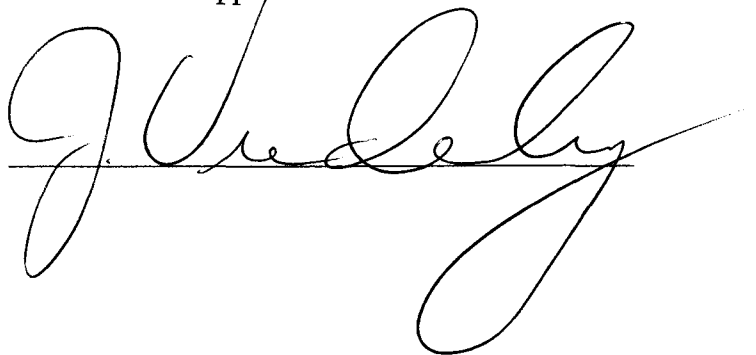
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
26th day of November, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

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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 26th day of November, 1982, he served the within notice of Decision by certified mail upon David L. Kipper the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David L. Kipper
5 E. 57th St.
New York, NY 10022

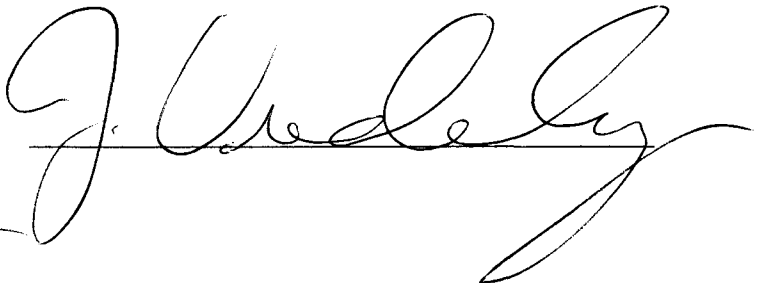
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
26th day of November, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

November 26, 1982

Irving Druckman
3333 C Henry Hudson Pkwy.
New York, NY 10463

Dear Mr. Druckman:

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
David L. Kipper
5 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
IRVING DRUCKMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1972, 1973 and
1974.

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DECISION

Petitioner, Irving Druckman, 3333C Henry Hudson Parkway, Riverdale, New York 10463, 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 1972, 1973 and 1974 (File No. 19416).

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 10047, on July 17, 1981 at 10:00 A.M. Petitioner appeared by David L. Kipper, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

I. Whether petitioner's distributive share of partnership income from Irving Druckman & Son, d/b/a Little Rock Furniture, should be increased.

II. Whether partnership losses derived from Sutton Stelton Associates are allowable for the years 1972, 1973 and 1974.

FINDINGS OF FACT

1. That for the tax years 1972, 1973 and 1974 petitioner filed separate New York State income tax returns on Form IT-208.

2. On February 28, 1977, the Audit Division issued a Statement of Audit Changes to petitioner imposing personal income tax of \$14,338.50, plus interest

of \$3,062.41, for a total due of \$17,400.91. Accordingly, on April 11, 1977, the Audit Division issued a Notice of Deficiency.

3. A "Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes" was properly executed for the year 1972 extending the period until April 15, 1977.

4. During the tax years in issue petitioner owned a two thirds (2/3) share of the partnership Irving Druckman and son, d/b/a Little Rock Furniture (File No. 19415).

5. That following a field audit conducted by the Income Tax Bureau of petitioner's business operations for the tax years 1972, 1973 and 1974 adjustments were made to the personal income tax returns of petitioner for the respective tax years which were reflected in the Notice of Deficiency issued April 11, 1977 asserting personal income tax due, as follows: 1972 - \$3,500.12; 1973 - \$3,318.30; 1974 - \$7,520.08, plus interest for each year.

6. That for the tax years 1972, 1973 and 1974 petitioner's personal income was adjusted for the respective tax years as follows:

Increase in partnership distribution from the operation of Irving Druckman and Son, d/b/a Little Rock Furniture, in the amounts of \$2,516.00, \$991.00 and \$1,044.00;

Disallowance of loss from the purchase of one-sixth (1/6) interest in "Sutton Stelton Associates" by the petitioner from his nephew David Druckman as the transaction was not conducted at "arms length" in the amounts of \$17,069.00, \$20,314.00 and \$45,760.00;

Modification of deduction of New York State and New York City Unincorporated Business Tax in the amounts of \$3,333.00, \$178.00 and \$3,074.00.

Modification of Medical expenses (statutory 3% limitation) in the amounts of \$566.00, \$639.00 and \$510.00.

Adjustment for overstatement of interest income for 1972 of \$719.00.

7. That as a consequence of the foregoing adjustments, taxable income of petitioner was increased for the tax years 1972, 1973 and 1974 respectively as follows: \$22,765.00, \$22,122.00 and \$50,388.00 which yielded a corrected personal income tax due in the amounts of \$6,134.06, \$6,775.55 and \$9,182.30, less personal income tax previously paid in the amounts of \$2,633.94, \$3,457.25 and \$1,662.22, resulting in deficiencies in personal income tax due in the amounts of \$3,500.12, \$3,318.30 and \$7,520.08.

8. During the hearing petitioner conceded tax liability for all of the audit issues contained in the Statement of Audit Changes and its annexed Explanation of Adjustments except as follows:

(a) The loss deductions claimed in connection with Sutton Stelton Associates.

(b) Liability for increased income distribution from the operation of Irving Druckman and Son, d/b/a Little Rock Furniture.

9. In another decision issued this date the State Tax Commission has determined that Irving Druckman & Son, d/b/a Little Rock Furniture, was not entitled to allocate the excess of its unincorporated business gross income over its unincorporated business deductions. Although said adjustment resulted in additional unincorporated business tax due, it does not result in additional personal income tax due since petitioner was a New York State resident partner and he reported his total Federal adjusted gross income to this State.

10. On January 1, 1971 petitioner purchased from his nephew, David Druckman, one-sixth of said David Druckman's interest in a limited partnership operating under the name Sutton Stelton Associates. The consideration for the sale was \$12,500.00 payable in twelve installments of \$1,000.00 each and a thirteenth installment of \$500.00, with interest on the unpaid balance at the rate of 6 percent per annum. Each installment was due on or before December 31 of each

year, and the first installment was due and payable on or before December 31, 1971. Petitioner presented copies of checks representing yearly payments for the years 1972 through 1980. David Druckman's other partners in Sutton Stelton Associates were not parties to the agreement between David Druckman and petitioner, nor is there any evidence that they were aware of said agreement.

11. Sutton Stelton Associates owned well over a hundred acres of land in Edison, New Jersey. Sutton Stelton Associates and another partnership, Sutton Kilmer Associates, as a joint venture, were developing the land into an industrial campus. During the time in issue approximately 12 buildings on the campus were occupied.

12. Sutton Stelton Associates' United States partnership return for 1972, 1973 and 1974 reported, respectively, that David Druckman sustained net losses of \$102,595.89, \$121,881.57 and \$274,574.00. Petitioner allocated one-sixth (1/6) of David Druckman's respective losses to his personal income tax returns as follows: \$17,069.00, \$20,314.00 and \$45,760.00.

CONCLUSIONS OF LAW

A. That as noted in Finding of Fact number "9", the State Tax Commission has determined that the partnership of Irving Druckman & Son, d/b/a Little Rock Furniture, was not entitled to allocate the excess of its unincorporated business gross income over its unincorporated business deductions. However, since petitioner was a resident of New York State he was required to, and in fact did, report his total Federal adjusted gross income to this State, including his total distributive share of partnership income from Little Rock Furniture.

B. That petitioner has sustained his burden of proof to show that he had acquired one-sixth (1/6) of David Druckman's interest in Sutton Stelton Associates in 1971 and that he owned said interest during the years at issue. The record

does not support the Audit Division's disallowance of petitioner's share of partnership loss from Sutton Stelton Associates. Therefore, the disallowance of said losses was arbitrary (Oscar J. Brown v. New York State Tax Commission, 279 A.D. 837, aff'd. 304 N.Y.651). Accordingly, petitioner is entitled to report losses from said partnership of \$17,069.00 for 1972, \$20,314.00 for 1973 and \$45,760.00 for 1974.

C. That the petition of Irving Druckman is granted to the extent shown in Conclusions of Law "A" and "B" supra. The Audit Division is directed to accordingly adjust the statutory medical adjustment; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 26 1982

STATE TAX COMMISSION

Acting Robert M. Baralund
PRESIDENT

Francis P. Koenig
COMMISSIONER

[Signature]
COMMISSIONER