

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

James P. & Nancy R. 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 Year :
1974.

State of New York
County of Albany

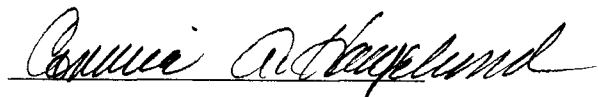
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1982, he served the within notice of Decision by certified mail upon James P. & Nancy R. Druckman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James P. & Nancy R. Druckman
420 E. 72nd St.
New York, NY 10021

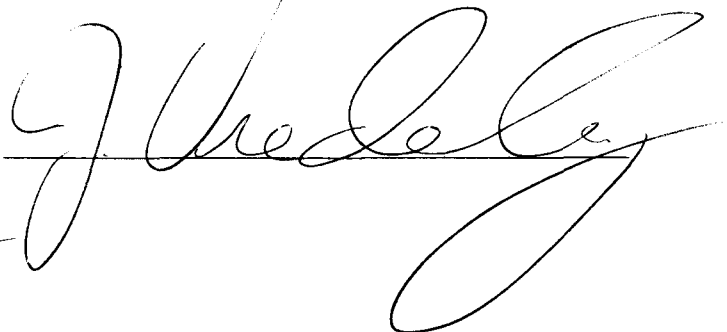
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

STATE TAX COMMISSION

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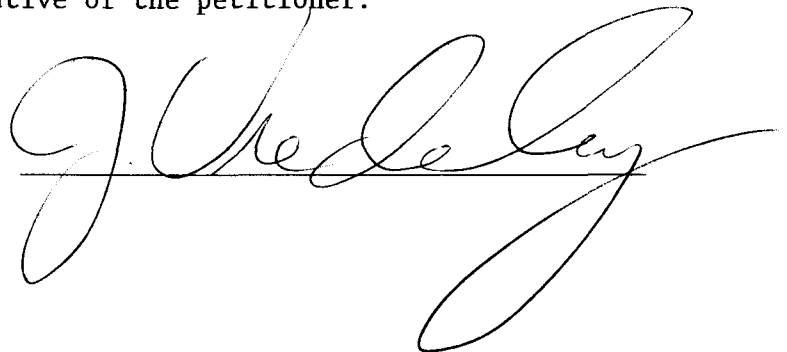

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1982, he served the within notice of Decision by certified mail upon S. Sidney Mandel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

S. Sidney Mandel
100 Park Ave.
New York, NY 10017

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

James P. & Nancy R. Druckman
420 E. 72nd St.
New York, NY 10021

Dear Mr. & Mrs. 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
S. Sidney Mandel
100 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES P. and NANCY R. DRUCKMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, James P. and Nancy R. Druckman, 420 East 72nd Street, New York, New York 10021, 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 1974 (File No. 19414).

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 November 21, 1980 at 1:15 P.M. Petitioners appeared by S. Sidney Mandel, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether it was proper to increase petitioners' distributive share of partnership income from Druckman Associates.

II. Whether it was proper to disallow petitioners' distributive share of partnership loss from Sutton Stelton Associates.

FINDINGS OF FACT

1. Petitioners herein, James F. Druckman and his wife, Nancy R. Druckman, were residents of the City and State of New York for the year 1974. They timely filed Form IT-201 New York State income tax resident return for 1974.

It was stated on the return that Mr. Druckman's occupation was that of an attorney and that Mrs. Druckman's occupation was that of a secretary.

2. On March 10, 1977 the Audit Division issued a Statement of Audit Changes. Annexed to the statement was a Schedule of Audit Adjustments stating as follows:

<u>ITEM OF RETURN</u>	<u>EXPLANATION OF ADJUSTMENTS</u>	<u>PERSONAL INCOME</u>
	Modification - NY City Income Tax Refund omitted	181
	Modification - IRS interest income not a deduction from income	32
*	Income From Partnership - Druckman Associates Corrected:	
	Per Audit 11,465	
	Per Return 10,397	1,068
	Modification - UB Tax omitted	760
*	Partnership Loss - Sutton Stelton Disallowed	68,644
	Standard Deduction - Maximum Allowed	(2,000)
	Exemptions 2 x 650	(1,300)
	Total Adjustment - Per Audit	<u>67,385</u>

During the hearing, petitioners only put in issue the two items preceded by an asterisk.

3. Also, annexed to the Statement of Audit Changes was the following Tax Computation Schedule:

Year or Period Ended	1974
Type of Return	IT-201
<u>PERSONAL INCOME</u>	
Net adjustment per audit	\$67,385.00
Taxable income previously stated	(20,845)
Corrected taxable income	\$46,540.00
Tax on corrected taxable income	5,291.00
Less statutory credit	-0-

Corrected tax due	\$ 5,291.00
Tax previously computed	-0-
Deficiency	<u>\$ 5,291.00</u>

4. In accordance with the aforementioned Statement of Audit Changes the Audit Division issued a Notice of Deficiency against petitioners on April 11, 1977 asserting personal income tax of \$5,291.00, plus interest, for the tax year 1974.

5. Petitioner James P. Druckman and his father, David Druckman, were partners in a partnership known as Druckman Associates. Petitioner James P. Druckman had a twenty percent share in said partnership and his father had an eighty percent share.

6. Druckman Associates was a representative of Bassett Furniture Industries, Bassett, Virginia.

7. The Schedule of Audit Adjustments increased the partnership income from Druckman Associates attributed to petitioner James Druckman in the amount of \$1,068.00. And, although an audit of the Druckman Associates partnership income tax return for 1974 was commenced in or about June, 1976, and the representative of said partnership supplied the necessary data requested by the auditor reviewing said return, no response was received from said auditor and no Statement of Audit Changes was issued for Druckman Associates for said year. No explanation was given in petitioners' Statement of Audit Changes concerning the reasons for the increase. Accordingly, petitioners were unable to make any statement of facts relating to this item since they had not been advised of the reason for the change.

8. On February 18, 1972, David Druckman assigned 25 percent of his 50 percent share of limited partnership interest in Sutton Stelton Associates ("Sutton") to petitioner James P. Druckman. The consideration for the assign-

ment was \$20,000.00, payable at the rate of \$1,000.00 per year without interest. Accordingly, petitioners reported on their 1974 Federal, New York State, and New York City income tax returns 25 percent of the loss shown on the Federal partnership return (Form 1065) for Sutton which was attributable to David Druckman. Petitioner, James P. Druckman, in a letter dated September 9, 1977, advised the Internal Revenue Service that "Pursuant to your telephone conversation with my attorney, Mr. S. Sidney Mandel, I have enclosed herewith a copy of an agreement between myself and David Druckman dated February 18, 1972 pursuant to which David Druckman sold me 25% of his interest in Sutton Stelton Associates.

As my attorney has advised you, David Druckman has not claimed any of said 25% of his interest on his tax returns. I have reported same."

No explanation is given in the Statement of Audit Changes for the disallowance of the share of partnership loss.

9. Sutton was not informed of the assignment until December 23, 1977 which date was subsequent to the audit in issue herein.

10. Sutton was in the business of developing industrial real property in Edison, New Jersey.

11. The witness for the Audit Division did not conduct the audit in issue herein. His testimony was nebulous, at best, as to the specific reasons for the asserted audit changes, herein, and as to whether or not any specific reasons for the changes were ever conveyed to petitioners.

12. Petitioners maintained that the audit changes herein were arbitrary and capricious.

CONCLUSIONS OF LAW

A. That since it appears from the record that no Notice of Deficiency was issued against Druckman Associates for 1974 and that Druckman Associates

did not pay additional taxes for said year and since the record discloses no independent reason for the adjustment increasing petitioners' income on the basis of the income of Druckman Associates, said adjustment of \$1,068.00 is deleted.

B. That petitioners have sustained their burden of proof to show that James P. Druckman had acquired 25% of David Druckman's interest in Sutton Stelton Associates in 1972 and owned same during the year 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 loss 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 the loss from said partnership of \$68,644.00.

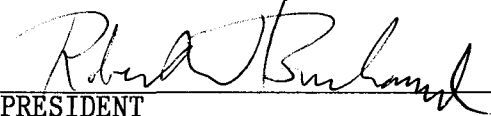
C. That the petition of James P. and Nancy R. Druckman is granted to the extent indicated in Conclusions of Law "A" and "B" supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 26 1982

STATE TAX COMMISSION

Acting


PRESIDENT


COMMISSIONER


COMMISSIONER