

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Michael Druckman :

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 1972, 1973 & 1974.

State of New York  
County of Albany

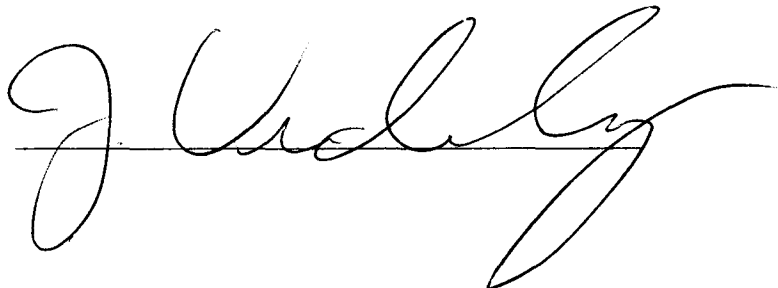
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1982, he served the within notice of Decision by certified mail upon Michael Druckman, the petitioner in the within proceeding,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

Michael Druckman  
560 North St.  
Greenwich, CT

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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In the Matter of the Petition :  
of :  
Michael Druckman : AFFIDAVIT OF MAILING  
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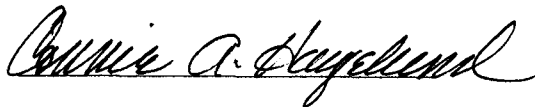
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1982, he served the within notice of Decision by certified mail upon David L. Kipper the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

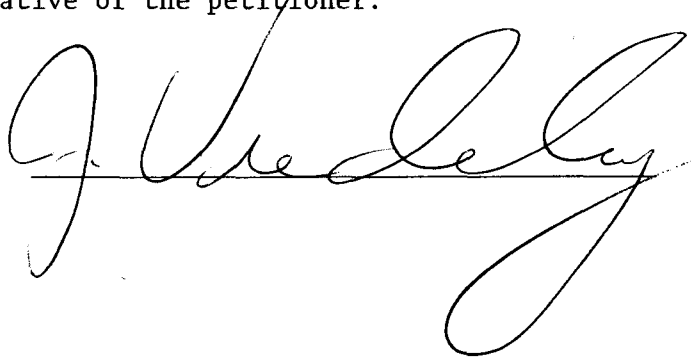
David L. Kipper  
5 E. 57th St.  
New York, NY 10022

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

Michael Druckman  
560 North St.  
Greenwich, CT

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 & 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  
David L. Kipper  
5 E. 57th St.  
New York, NY 10022  
Taxing Bureau's Representative

## STATE TAX COMMISSION

## DECISION

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).

1. On April 11, 1977 the Audit Division issued against the petitioner, Michael Druckman, a timely notice of deficiency for the tax years 1972, 1973 and 1974.

2. That for the tax years 1972, 1973 and 1974 petitioner filed separate New York State income and unincorporated business tax returns.

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 of limitation on assessment until April 15, 1977.

4. During the tax years in issue, petitioner owned a one third (1/3) share of the partnership Irving Druckman and Son, d/b/a Little Rock Furniture (TAB File No. 19415).

5. That as a result of a field audit conducted by the Income Tax Bureau, adjustments were made to petitioner's business operations for the tax years 1972, 1973 and 1974. On April 11, 1977, a Notice of Deficiency was issued asserting personal income tax due, as follows: 1972 - \$2,830.67; 1973 - \$1,942.80; 1974 - \$2,650.50. Said Notice also showed an unincorporated business tax refund of \$130.21 for 1974.

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

(a) Increase in partnership distribution from the operation of Irving Druckman and Son, d/b/a Little Rock Furniture, in the amounts of \$22,630.00; \$19,888.00; \$31,315.00.

(b) Reduction of business income attributable to Michael Druckman as these amounts have been included in partnership income of Irving Druckman and Son, d/b/a Little Rock Furniture, in the amounts of (\$18,372.00); (\$16,392.00); (\$27,792.00):

(c) Modification of deduction of New York State and New York City Unincorporated Business Tax in the amounts of \$1,667.00; \$89.00; \$1,537.00:

(d) Disallowance of loss from the purchase of an interest in "Sutton Portsmouth Associates", by the petitioner from his cousin David Druckman as the transaction was not conducted at "arms length", in the amounts of \$12,029.00; \$8,498.00; \$6,585.00:

(e) Disallowance of loss from the purchase of an interest in "Sutton Kilmer Associates" for the tax year 1974 by the petitioner from his cousin David Druckman as the transaction was not conducted at "arms length" in the amount of \$5,032.00:

(f) Modification of medical expenses (statutory 3% limitation) in the amounts of \$489.00; \$360.00; \$454.00.

(g) Modification of allocable expenses for items of tax preference attributable to "Sutton Portsmouth Associates" for the tax years 1973 and 1974 in the amounts of (\$47.00) and (\$31.00) respectively:

(h) Disallowance of wife Nancy Druckman's tuition expenses for the tax years 1973 and 1974 in the amounts of \$556.00 and \$570.00 respectively:

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: \$18,443.00; \$12,952.00; \$17,670.00; which yields a corrected personal income tax in the amounts of \$4,873.00; \$4,405.25 and \$6,869.45, less personal income tax previously paid in the amounts of \$2,042.33, \$2,462.45, and \$4,218.95, resulting in deficiencies in personal income tax due in the amounts of \$2,830.67, \$1,942.80, and \$2,650.50.

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 losses claimed in connection with Sutton Portsmouth Associates and Sutton Kilmer 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 and 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 first cousin, David Druckman, 50 percent of said David Druckman's interest in a limited partnership operating under the name Sutton Portsmouth Associates. The consideration for the sale was \$15,000.00 payable in 15 equal annual payments with interest on the unpaid balance at the rate of 6 percent per annum. The first installment was due and payable on or before December 31, 1971 and each subsequent payment was due and payable on or before December 31, of each subsequent year, until paid. Petitioner presented copies of checks representing yearly payments for the years 1972 through 1980, except for the year 1975. Proof of payment for 1975 was not offered in evidence because all of his 1975 records and cancelled checks were destroyed in a fire in approximately mid-1980. David Druckman's other partners in Sutton Portsmouth 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. The Sutton Portsmouth Associates partnership held title to 104 garden apartment units in Portsmouth, Virginia. The construction cost was \$1,200,000.00 to \$1,300,000.00. The total cash portion of the investment in Sutton Portsmouth Associates was a small amount relative to the total purchase price because the bulk of the construction cost was financed by an FHA mortgage. Accordingly the partners needed only a small amount of investment capital. The general partner of Sutton Portsmouth Associates is one Harold Sterling.

12. Petitioner submitted a copy of Federal Schedule E & R for 1974 showing his distributive share of partnership loss from Sutton Kilmer Associates to be \$5,032.00

13. At the time of the hearing herein petitioner testified that Mr. Sterling estimated that the property in issue was then worth approximately \$2,400,000.00.

14. The Federal partnership return of Sutton Portsmouth Associates for 1972, 1973 and 1974 reported, respectively, that David Druckman sustained net losses of \$24,057.06, \$16,995.77 and \$13,170.92. David Druckman allocated 50 percent of the respective losses to his personal income tax returns and petitioner allocated the remaining 50 percent of the respective losses to his personal income tax returns. Petitioner submitted copies of Federal Schedule E & R for each year showing his distributive share of partnership income/loss from said partnership.

15. The record does not contain information which shows that business income reported by petitioner was included in unincorporated business gross income of Little Rock Furniture.

#### 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 Michael Druckman 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 50 percent of David Druckman's interest in Sutton Portsmouth Associates and that he owned said interest during the years at issue. There is nothing in the record to support the Audit Division's disallowance of petitioner's share of the partnership loss from Sutton Portsmouth Associates nor is there any evidence to support the disallowance of the loss from Sutton Kilmer 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 \$12,029.00 for 1972, \$8,498.00 for 1973 and \$11,617.00 for 1974.

C. That the business income of petitioner Michael Druckman was not included in the unincorporated business gross income of Little Rock Furniture. Therefore, the adjustments shown in Finding of Fact "6(b)" supra are incorrect.

D. That the Audit Division is directed to modify the Notice of Deficiency to the extent shown in Conclusions of Law "A", "B", and "C", supra and Finding of Fact "6(f)"; 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 W. Boudard  
PRESIDENT

Francis R. Koehn  
COMMISSIONER

[Signature]  
COMMISSIONER