

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Nas S. & Barbara Eftekhar : 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 1975. :

State of New York
County of Albany

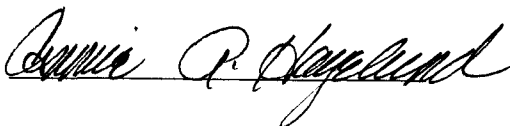
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1982, he served the within notice of Decision by certified mail upon Nas S. & Barbara Eftekhar, the petitioner in the within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

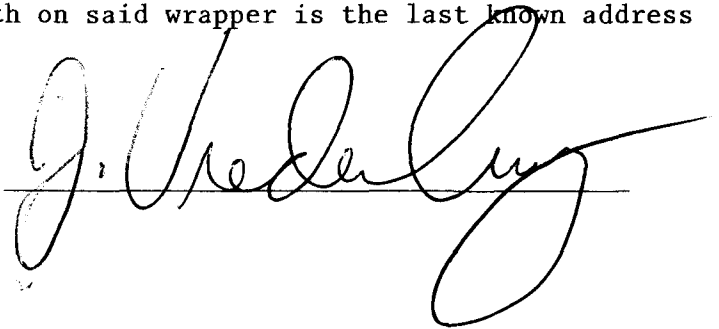
Nas S. & Barbara Eftekhar
25 Paddock Rd.
Ho-Ho-Kus, NJ 07423

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

In the Matter of the Petition
of

Nas S. & Barbara Eftekhar

:

:

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 :
1975.

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 Diane G. Kranz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Diane G. Kranz
Kranz & Co.
635 Madison Ave.
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

Nas S. & Barbara Eftekhari
25 Paddock Rd.
Ho-Ho-Kus, NJ 07423

Dear Mr. & Mrs. Eftekhari:

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
Diane G. Kranz
Kranz & Co.
635 Madison Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
NAS S. AND BARBARA EFTEKHAR
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1975.

DECISION

Petitioners, Nas S. and Barbara Eftekhari, 25 Paddock Road, Ho-Ho-Kus, New Jersey 07423, 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 1975 (File No. 25812).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 2, 1982 at 9:30 A.M. Petitioners appeared by Diane G. Kranz, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

- I. Whether certain professional service corporation adjustments were proper.
- II. Whether gains and losses from certain partnerships should be disallowed.
- III. Whether modification for allocable expenses attributable to items of tax preference should be made and minimum income tax imposed on petitioners.
- IV. Whether petitioners are entitled to allocate income outside of New York State.

FINDINGS OF FACT

1. Petitioners, Nas S. and Barbara Eftekhari, residents of New Jersey, filed a joint New York State Income Tax Nonresident Return for 1975.

2. Petitioner Nas S. Eftekhari is a physician practicing in New York. He reported wage and salary income from his New York professional service corporation for the year at issue.

3. On August 25, 1978 the Audit Division issued a Notice of Deficiency to petitioners in the amount of \$21,146.45 in additional tax, plus interest. The deficiency was based on the following (outlined in a Statement of Audit Changes):

- a. certain professional service corporation adjustments;
- b. disallowance of the nonresident petitioners' gains or losses from partnerships the assets of which were located outside of New York State;
- c. modification of allocable expenses attributable to items of tax preference.

4. In view of the partnership losses which had been reported on petitioners' return, petitioners did not claim allocation of income. However, after receiving the Statement of Audit Changes disallowing the losses, they claimed an allocation based on the fraction 148/247, which represents 148 days worked in New York and 247 days worked overall.

5. Petitioners' representative conceded that the gains and losses from Bainwell Red Earth, a Louisiana partnership, and Arford Leasing Company, a Maryland partnership, should be disallowed. The representative also pointed out that disallowance of the net partnership loss of \$146,099.00 rendered the modification for allocable expenses attributable to items of tax preference inapplicable. The representative also claimed that for the same reasons the minimum income tax which was originally reported based on \$58,004.00 in items

of tax preference (accelerated depreciation on real property) should be eliminated. The parties stipulated at the hearing that the modification for allocable expenses attributable to items of tax preference and the computation of New York State minimum income tax should be eliminated.

6. At the hearing, petitioners' representative conceded that the professional service corporation adjustments were proper; thus the only matter remaining at issue was the allocation of income.

7. After the Audit Division examined certain records provided by petitioners' representative at the hearing, the parties stipulated that petitioner Nas S. Eftekhari was entitled to allocate his income based on eight days having been worked outside New York State with the calculation of days to exclude Saturdays and Sundays.

CONCLUSIONS OF LAW

A. That based upon the stipulations of the parties and other concessions as noted in the Findings of Fact, the Audit Division is to recalculate petitioners' tax as follows:

- i. The professional service corporation adjustments are to be sustained;
- ii. The disallowance of gain or loss from Bainwell Red Earth and Arford Leasing Company is sustained;
- iii. The modification for allocable expenses attributable to items of tax preference is to be eliminated;
- iv. The New York State minimum income tax is to be eliminated;
- v. Petitioner Nas S. Eftekhari's wage and salary income is to be allocated to New York State allowing eight days as having been worked outside of New York State (as per Finding of Fact "7" above).

B. That the petition of Nas S. and Barbara Eftekhari is granted to the extent indicated in paragraphs iii, iv and v of Conclusion of Law "A" and except as so granted, the petition is denied and the Notice of Deficiency sustained.

DATED: Albany, New York

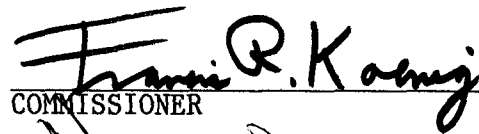
NOV 26 1982

STATE TAX COMMISSION

ACTING PRESIDENT



COMMISSIONER



COMMISSIONER

