

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Henry M. Gross, Jr.
and Catherine E. Gross

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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Henry M. Gross, Jr., and Catherine E. Gross the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry M. Gross, Jr.
and Catherine E. Gross
Rogers Lane, P.O. Box 356
Remsenburg, NY 11960

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
27th day of May, 1982.

Camille R. Highland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Henry M. Gross, Jr.
and Catherine E. Gross

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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Charles H. Fish the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles H. Fish
Arthur Andersen & Co.
1345 Avenue of the Americas
New York, NY 10019

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
27th day of May, 1982.

Annie A. Haglund

J. Vredenburg

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

May 27, 1982

Henry M. Gross, Jr.
and Catherine E. Gross
Rogers Lane, P.O. Box 356
Remsenburg, NY 11960

Dear Mr. & Mrs. Gross:

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
Charles H. Fish
Arthur Andersen & Co.
1345 Avenue of the Americas
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HENRY M. GROSS, JR. and CATHERINE E. GROSS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Henry M. Gross, Jr. and Catherine E. Gross, Rogers Lane, P.O. Box 356, Remsenburg, New York, 11960 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. 22018).

A formal hearing was held before Arthur S. Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 24, 1981 at 2:45 P.M. Petitioner appeared by Charles H. Fish, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioners' payments of foreign taxes to Indonesia pursuant to an oil sharing contract may be reported as an itemized deduction or credit on petitioners' New York return when such payments were applied as a credit on petitioners' federal return.

FINDINGS OF FACT

1. Petitioners filed a New York State Income Tax Resident Return for the 1975 tax year. In this return petitioners claimed a foreign tax credit against their New York State tax in the amount of \$7,233.20.

2. On January 31, 1977 petitioners executed an amended New York State Combined Income Tax Return for the 1975 tax year seeking a refund. In the amended return the previously claimed foreign tax credit was omitted. However, petitioners sought an additional itemized deduction in the amount of \$68,519.00 for taxes paid to Indonesia. This amended return stated that on petitioners' Federal tax return, the foreign taxes were claimed as a credit.

3. In November, 1977 the Audit Division issued a Statement of Audit Changes which stated, in substance: that since the foreign taxes were claimed as credits and not deductible business expenses on the federal return, the taxes could not be claimed as a modification increasing federal itemized deductions on the New York return; that the refund sought on the amended return was not allowed since the New York Tax Law does not contain a provision permitting a modification for foreign taxes that would increase federal itemized deductions; and that petitioners' New York liability is increased by the foreign tax credits claimed on the ground that foreign taxes paid may not be claimed as a credit against New York tax. Accordingly, on February 27, 1978 the Audit Division issued a Notice of Deficiency for the year 1975 of \$7,233.20, plus interest of \$1,150.44, for a total of \$8,383.64.

4. Thereafter petitioners filed a petition asserting that they "erroneously failed to exclude from total New York income an amount of \$68,519.00 accruing to the Indonesian government and never received by taxpayer directly or, if received at all through a deemed agent, not received under a claim of right so as to constitute gross income to him." Petitioners further asserted that the share of production accruing to the Indonesian government constituted a division of gross receipts between participants of a joint venture or, in the alternative,

an amount held in trust for the Indonesian government which does not constitute gross income.

5. Subsequent to the hearing, petitioner Henry M. Gross, Jr.'s representative submitted a letter which clearly shows that the amount of \$68,519.00 was petitioner's share of foreign taxes paid by the joint venture on behalf of its partners.

CONCLUSIONS OF LAW

A. That there is no provision in Article 22 of the Tax Law which permits an individual to deduct income taxes paid to a foreign government as a New York itemized deduction (see Tax Law §615(c)(1); 20 NYCRR 117.11(a)).

B. That for New York personal income tax purposes the federal foreign tax credit is not allowable against tax (20 NYCRR 103.3; Matter of Robert Goldstein and Rose B. Goldstein, State Tax Comm., October 31, 1980).


C. That the petition of Henry M. Gross, Jr. and Catherine E. Gross is denied and the Notice of Deficiency dated February 27, 1978 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER