

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Edwin R. & Helyn M. Johnston : 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.

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State of New York  
County of Albany

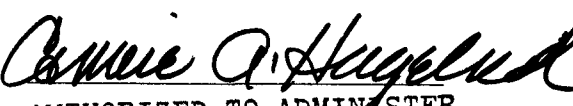
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Edwin R. & Helyn M. Johnston, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

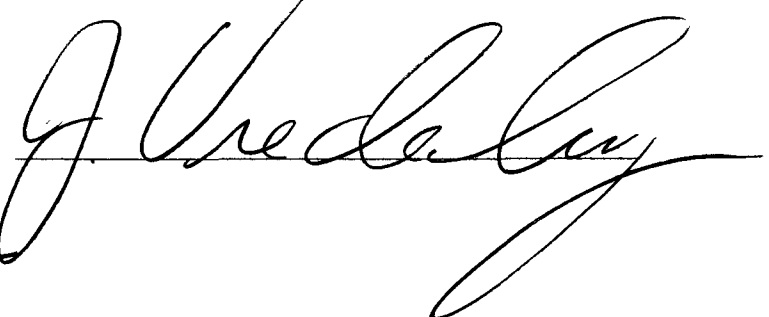
Edwin R. & Helyn M. Johnston  
c/o Harry Goodkin & Co.  
60 East 42nd Street  
New York, NY 10165

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  
14th day of December, 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

Edwin R. & Helyn M. Johnston

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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 14th day of December, 1982, he served the within notice of Decision by certified mail upon Morris Meyerson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

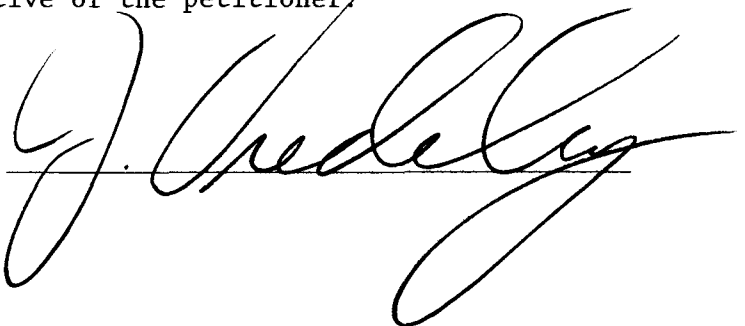
Morris Meyerson  
Harry Goodkin & Co.  
60 East 42nd St.  
New York, NY 10165

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  
14th day of December, 1982.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 14, 1982

Edwin R. & Helyn M. Johnston  
c/o Harry Goodkin & Co.  
60 East 42nd Street  
New York, NY 10165

Dear Mr. & Mrs. Johnston:

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  
Morris Meyerson  
Harry Goodkin & Co.  
60 East 42nd St.  
New York, NY 10165  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition               | : |          |
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| of  | : |          |
|   | : |          |
| EDWIN R. JOHNSTON AND HELYN M. JOHNSTON     | : | DECISION |
|   | : |          |
| for Redetermination of a Deficiency or for  | : |          |
| Refund of Personal Income Tax under Article | : |          |
| 22 of the Tax Law for the Year 1975.        | : |          |

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Petitioners, Edwin R. Johnston and Helyn M. Johnston, c/o Harry Goodkin & Co., 60 East 42nd Street, New York, New York 10165, 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. 26716).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 16, 1981 at 9:15 A.M. Petitioners appeared by Morris Meyerson, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUES

- I. Whether days worked at home by petitioner during 1975 are properly considered as days worked outside New York State for income allocation purposes.
- II. Whether petitioner is entitled to losses sustained from a New York partnership and from a New Jersey partnership.
- III. Whether the Audit Division properly disallowed miscellaneous deductions.

FINDINGS OF FACT

1. Petitioners timely filed their joint New York State Income Tax Non-resident Return for the year 1975.

2. On December 1, 1978, the Audit Division issued a Statement of Audit Changes wherein additional personal income tax was found due in the amount of \$16,017.12. Petitioners had failed to reply to letter inquiries and therefore allocation of wages, losses from two partnerships, and miscellaneous deductions were disallowed. On March 8, 1979, a Notice of Deficiency was issued in the amount of \$16,017.12 plus interest of \$3,938.86 for a total of \$19,955.98.

3. Petitioner Edwin R. Johnston, for investment and tax shelter purposes, became a limited partner in two partnerships: ie. Master Associates, which promoted movies and was located in Great Neck, New York, and J.A.S. Associates, which also promoted movies and was located in New Jersey. Petitioners reported losses from both these partnerships on Federal Schedule "K-1", copies of which were issued to Mr. Johnston. A loss of \$17,251.00 was claimed from Master Associates and \$31,131.00 from J.A.S. Associates.

4. Edwin R. Johnston was employed by Duplex Products, Inc. as a forms systems salesman with customers in New Jersey and New York. He stated that "all the design work is done at my office in New Jersey, my think lab, so to speak, where you make your rough copy...". This office was located in his home. He claimed 116 days out of 216 days were worked in New York. He worked out of the company's Wall Street location where he was provided with an office. Since there were no drawing facilities available there, he claimed that it was necessary to do this work at his home. He claimed that he could not work in his New York office because of "space and time" as he worked late hours and week-ends. Upon federal audit he submitted a company letter explaining the necessity for the home office expense.

5. As the result of the Internal Revenue audit, petitioners' income was adjusted due to the disallowance of nonreimbursed business expenses of \$5,699.00 and contributions of \$500.00 which increased taxable income by \$6,199.00.

6. Petitioners presented no documentary or other substantial evidence as to whether the miscellaneous deductions disallowed by the Audit Division were improper, or that the losses from the two limited partnerships were connected with or derived from New York sources.

#### CONCLUSIONS OF LAW

A. That the Tax Commission is not required to accept as correct any Federal change in taxable income but may conduct an independent audit or investigation in regard thereto. 20 NYCRR 153.4. Evidence of changes accepted by the Internal Revenue Service with nothing more is insufficient to substantiate those deductions claimed by petitioners. No documentary or other substantial evidence was presented in support of their claim.

B. That the services rendered by petitioner Edwin R. Johnston at his home for Duplex Products, Inc. were performed there by reason of his own convenience and not for the employer's necessity. Accordingly, the days worked at home by petitioner cannot be considered as days worked outside New York State for income allocation purposes within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16 (Burke v. Bragalini, 10 A.D.2d 654; Simms v. Procaccino, 47 A.D.2d 149; Wheeler v. State Tax Commission, 72 A.D.2d 878).

C. That the services performed by petitioner Edwin R. Johnston at his out-of-state home could just as easily have been performed at Duplex Products' office. The facilities required by petitioner could have been set up in employer's New York office (Page v. State Tax Commission, 46 A.D.2d 341).

D. That the New York adjusted gross income of a non-resident partner shall include his distributive share of all items of partnership income, gain, loss and deduction entering into his Federal adjusted gross income to the extent such items are derived from or connected with New York sources. No documentary or other substantial evidence was presented which showed that the items of partnership loss were connected with or derived from New York sources. Tax Law section 637(a) and 20 NYCRR 134.1.

E. That pursuant to section 689(e) of the Tax Law the burden of proof is upon petitioners to establish that the deficiency asserted by the Audit Division is erroneous and/or improper.

F. That the petition of Edwin R. Johnston and Helyn M. Johnston is denied and the Notice of Deficiency issued on March 8, 1979 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 14 1982

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER