

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Joseph & Jeanette Neulinger	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Joseph & Jeanette Neulinger, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

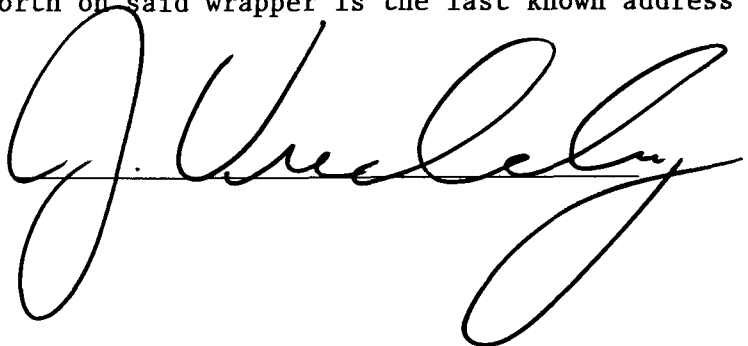
Joseph & Jeanette Neulinger
2751 S. Ocean Dr.
Hallandale, FL 33009

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
6th day of October, 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 :
Joseph & Jeanette Neulinger :
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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Joseph J. Gluckman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

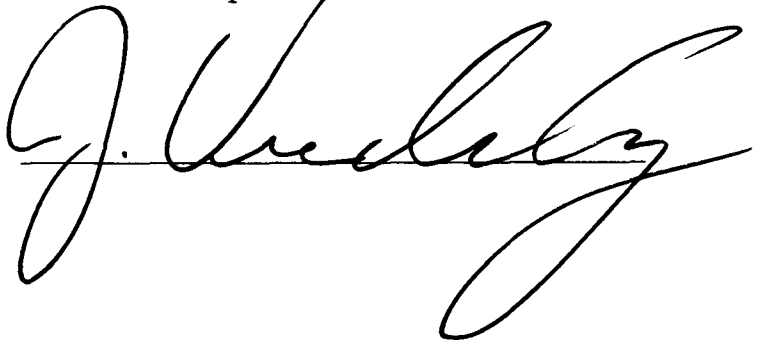
Joseph J. Gluckman
Gluckman & Gevirman, CPA's
41 E. 42nd St.
New York, NY 10017

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
6th day of October, 1982.

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

A large, stylized handwritten signature in black ink, appearing to read 'J. Vredenburg', is written over a horizontal line.

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

October 6, 1982

Joseph & Jeanette Neulinger
2751 S. Ocean Dr.
Hallandale, FL 33009

Dear Mr. & Mrs. Neulinger:

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
Joseph J. Gluckman
Gluckman & Gevirman, CPA's
41 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH NEULINGER and JEANETTE NEULINGER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners, Joseph Neulinger and Jeanette Neulinger, 2751 South Ocean Drive, Hallendale, Florida 33009, 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. 25853).

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 2:45 P.M. Petitioners appeared by Gluckman and Gevirman, CPA's. The Audit Division appeared by Paul B. Coburn, Esq. (Kevin A. Cahill, Esq., of counsel).

ISSUES

I. Whether petitioner Joseph Neulinger substantiated days worked outside the State so as to properly allocate income.

II. Whether petitioner Joseph Neulinger has substantiated a loss as an allowable deduction connected with a New York source.

FINDINGS OF FACT

1. On December 1, 1978, the Audit Division issued a Statement of Audit Changes wherein additional personal income tax was computed because of failure to submit necessary information regarding days worked outside the State and additional information concerning a \$7,687.00 loss. Wages which were reported

and allocated outside New York State and the loss which was attributable to a New York source had not been substantiated and thus had been disallowed.

Accordingly, a Notice of Deficiency in the amount of \$12,377.46 plus interest of \$3,043.81 for a total of \$15,421.27 was issued on March 8, 1979.

2. Petitioners timely filed their New York State nonresident return for 1975, wherein thirty days were allocated as days petitioner Joseph Neulinger worked in New York State. A daily summary worksheet was offered which set forth where said petitioner, an executive with a management corporation, spent most of his time working. Most of his work was in Florida as was his residence, 1890 South Ocean Drive, Hallandale, Florida 33009. Petitioner submitted American Express statements which corroborated where he worked and the amount of expenses he incurred eating in restaurants and staying in hotels. However, no proof was offered that the expenses incurred were for business purposes and that work done outside New York State was for the necessity of the employer.

3. Petitioner offered Schedule A - Partner's Share of Income, Deductions, etc., a Supplement to Schedules A and B of NYC-204-1975 for the calendar year 1975 for the period beginning July 1, 1975 and ending December 31, 1975, for Lunar Associates, c/o Lloyd Probbler, 666 Fifth Avenue, New York, New York 10019, wherein a loss of \$7,687.00 was indicated from ordinary income. A copy of a Supplement to Schedules K and P of IT-204-1975 for New York State, showing the ordinary loss of \$7,687.00 for Lunar Associates for the period beginning July 1, 1975 and ending December 31, 1975, was also offered. No proof was offered that the loss was attributable to a New York source.

CONCLUSIONS OF LAW

A. That individuals, whose gross income include salaries, wages or similar compensation for personal services rendered, are required, with respect

to such income, to keep such records as will enable the Tax Commission to determine the correct amount of income subject to tax. 20 NYCRR 152.2. If a nonresident employee performs services for his employer both within and without the State, his income derived from New York sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to the total number of working days employed both within and without the State. However, any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity - as distinguished from convenience - obligate the employee to out-of-state duties in the service of his employer. 20 NYCRR 131.16. The records submitted by petitioner Joseph Neulinger, do not provide sufficient information to determine the amount of income subject to tax within the meaning and intent of 20 NYCRR 152.2. The schedule for days worked outside New York State does not indicate any business purpose for said days. Therefore, no allocation is allowed since it was not shown that said days were worked out-of-state for the necessity of his employer.

B. That the New York adjusted gross income of a nonresident 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, i.e., attributable to the ownership of any interest in real or tangible personal property in the State or to a business, trade, profession or occupation carried on in this State. 20 NYCRR 134.1(a). Petitioner Joseph Neulinger did not disclose satisfactorily the partnership loss was attributable to New York sources.

C. That the petition of Joseph Neulinger and Jeanette Neulinger is denied and the Notice of Deficiency issued on March 8, 1979 is sustained.

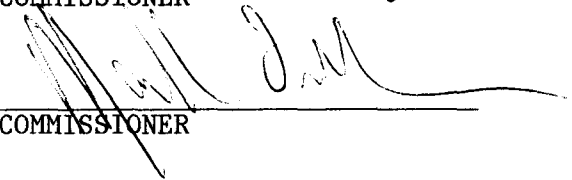
DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION


ACTING RESIDENT


COMMISSIONER


COMMISSIONER