

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
George Doublier	:	
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 Years	:	
1970 - 1973.	:	

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon George Doublier, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Doublier  
2 Edgemere Dr.  
Matawan, NJ 07741

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  
8th day of July, 1983.





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 :  
George Doublier :  
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 Years :  
1970 - 1973. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Barry L. Salkin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barry L. Salkin  
Kelly, Drye & Warren  
350 Park 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  
8th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

July 8, 1983

George Doublier  
2 Edgemere Dr.  
Matawan, NJ 07741

Dear Mr. Doublier:

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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Barry L. Salkin  
Kelly, Drye & Warren  
350 Park Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GEORGE DOUBLIER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1970, 1971,	:	
1972 and 1973.	:	

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Petitioner, George Doublier, 2 Edgemere Drive, Matawan, New Jersey 07741, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970, 1971, 1972 and 1973. (File No. 27208)

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 25, 1981 at 2:45 P.M. Petitioner appeared by Barry L. Salkin, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner, George Doublier, was a limited partner or a subordinated creditor in the New York partnership of Cahill, Smith and Gallatin for New York State income tax purposes.

II. Whether, if petitioner is found to be a limited partner, was his failure to report the income from the partnership due to reasonable cause.

FINDINGS OF FACT

1. Petitioner, George Doublier, a nonresident did not file New York State personal income tax returns for the years at issue.

2. Under date of March 30, 1979, the Audit Division issued a Notice of Deficiency against the petitioner for the years, 1970 through 1973 asserting personal income tax of \$4,664.80, penalties pursuant to section 685, subdivisions (a)(1), (a)(2), (b) and (c) of the Tax Law and interest of \$4,455.21 for a total of \$9,120.01. The Notice of Deficiency was based on a Statement of Audit Changes, issued under the date of October 7, 1976, which held that income derived by petitioner, as a limited partner in the New York State partnership of Cahill, Smith and Gallatin (hereinafter "partnership") was subject to New York State personal income tax; and, that petitioner's failure to file said return and report income thereon is subject to the above penalties.

3. On April 1, 1970, petitioner entered into a written agreement with the partnership which provided, that in consideration for securities with a loan value of \$200,000.00 which the petitioner contributed to the partnership capital, petitioner would be admitted to the firm as a limited partner. The contribution of securities made by the petitioner, as a limited partner, became and remained partnership capital and subordinate in right of payment in full of claims of all present and future creditors of the partnership.

4. The agreement further provided that petitioner, George Doublier, shall have no interest in the seat accounts nor participate in the profits or losses of the partnership. He shall receive interest at the rate of six (6%) per cent per annum on the loan value of the securities contributed by him as his sole compensation for his participation in the firm as a limited partner.

5. Petitioner conceded that the agreement designated him as a limited partner; however, he argued that the terms of the agreement clearly indicate that his relationship with said entity was not that of a partner, but rather

that of a subordinated creditor. Further, his characterization as a partner was for reasons of prestige.

Petitioner argued that the securities given to the partnership were not a capital contribution but were instead a loan. In return for the use of the securities, the partnership agreed to pay him interest at the rate of six percent annum. He further argued that he had the right at all times to withdraw all or part of his securities from the partnership upon the substitution thereof of securities having an equal or greater value.

6. Capital was a material income producing factor in the partnership.

7. Petitioner's failure to file New York State Personal income tax returns was founded on his belief, that his contributions to the partnership represented a loan, and that the receipt of interest and dividends thereon by a nonresident is not subject to New York State personal income tax.

8. The partnership is a limited partnership organized under the Limited Partnership Laws of New York State.

#### CONCLUSIONS OF LAW

A. That a limited partner's contribution to a limited partnership is not a loan and the limited partner is not a creditor of the firm because of his contributions thereto [see 68 C.J.S. Partnership section 471 c (1950)]. A limited partner is as much a partner as is general partner [see 43 N.Y. Jur. Partnership section 284 (1965)] (see also Executive House Realty v. Hagen, 108 Misc.2d 986, 991; 438 N.Y.S.2d 174).

B. That Cahill, Smith and Gallatin is a limited partnership. Petitioner, George Doublier, was admitted to said partnership as a limited partner. Therefore, he is a partner for the subject years and his New York adjusted gross income is determined in accordance with section 637 of the Tax Law.

C. That petitioner, George Doublier's, failure to file New York State nonresident personal income tax returns for subject years was due to reasonable cause and not due to willful neglect, and, accordingly, penalties asserted pursuant to section 685, subdivisions (a)(1) and (a)(2) and (b) of the Tax Law are cancelled.

D. That petitioner did not show he met the requirements of sections 685(d) of the Tax Law for waiving the penalty imposed under section 685(c) of the Tax Law for his failure to file a declaration or underpayment of estimated tax.

E. That the petition of George Doublier is granted to the extent indicated in Conclusions of Law "C", and that, except as so granted the Notice of Deficiency dated March 30, 1979 is sustained, together with such additional interest as may be legally due and owing.


DATED: Albany New York

JUL 08 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER