

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Harvey J. Engel
and Janine Engel

:

: 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

David Parchuck, 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 1st day of April, 1983, he served the within notice of Decision by certified mail upon Harvey J. Engel, and Janine Engel the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harvey J. Engel
and Janine Engel
30 E. 71st St.
New York, NY 10021

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
1st day of April, 1983.

David Parchuck

Janine A. Engel

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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In the Matter of the Petition :
of
Harvey J. Engel :
and Janine Engel :

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

David Parchuck, 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 1st day of April, 1983, he served the within notice of Decision by certified mail upon Hill M. Lalin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hill M. Lalin
J. H. Cohn & Co.
400 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
1st day of April, 1983.

David Parchuck

William R. Dege
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

April 1, 1983

Harvey J. Engel
and Janine Engel
30 E. 71st St.
New York, NY 10021

Dear Mr. & Mrs. Engel:

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
Hill M. Lalin
J. H. Cohn & Co.
400 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HARVEY J. ENGEL AND JANINE ENGEL
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, Harvey J. Engel and Janine Engel, 30 East 71st Street, New York, New York 10021, 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. 27211).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 29, 1982 at 1:20 P.M. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel). Petitioner appeared by J.H. Cohn & Co. (Hill M. Lalin, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioners' itemized deduction for investment advisory fees and services for the taxable year 1975.

FINDINGS OF FACT

1. Petitioners, Harvey J. Engel and Janine Engel, filed a joint U.S. Individual Income Tax Return and a joint New York State Income Tax Resident Return for 1975. On these returns, petitioners reported an itemized deduction of \$60,000.00 for "Investment Advisory Fees & Services" and a farm loss of \$27,885.00.

2. On April 13, 1979, the Audit Division issued to petitioners a Notice of Deficiency accompanied by an explanatory Statement of Audit Changes. The Notice of Deficiency asserted a deficiency of New York State personal income tax for the years 1975 and 1976 and a deficiency of New York City personal income tax plus interest for the year 1976. The deficiency asserted for both years was for tax of \$17,238.77 plus interest of \$4,071.04 for a total due of \$21,309.81. The Statement of Audit Changes explained that the asserted deficiency was premised upon the disallowance of farm losses for the years 1975 and 1976 and the disallowance of investment advisory fees for the year 1975. The Statement of Audit Changes did not state why the foregoing deductions were disallowed.

3. Prior to the formal hearing, the Audit Division conceded the propriety of petitioners' deductions of the farm losses, thereby reducing the alleged deficiency of New York income taxes for 1975 and cancelling the portion of the alleged deficiency which pertained to 1976.

4. On December 18, 1975 petitioner Harvey J. Engel drafted two checks to the order of Stewart Capital Corporation ("Stewart"). The checks were drafted in the amounts of \$60,000.00 and \$6,040.00. The check for \$60,000.00 was in payment for services rendered in filing 1500 applications for the federal oil and gas lease lottery. The check for \$6,040.00 was in payment of the filing fee for each lottery entered.

5. Stewart is a corporation which provides clerical and professional services for individuals who wish to obtain oil and gas leases from the federal government through the federal government's procedure of offering leases of land through a lottery. Stewart's professional staff includes individuals who have expertise in evaluating oil and gas leases. Each month Stewart obtains a

list of available oil and gas leases and, based upon an analysis by Stewart's staff and a computer analysis of certain information, determines which leases offer the greatest opportunity to Stewart's clients. Thereafter, Stewart prepares the applications of its clients and forwards them to the Bureau of Land Management. Stewart also obtains a list of winners and if one of its clients wins a lease, it advances the first years rent. Stewart's clients then repay Stewart for the first years rent. A record of leases awarded is also maintained by Stewart. Stewart advises its clients when future rent payments are due.

6. Mr. Engel acquired one or more federal oil and gas leases as a result of the Stewart's services.

7. Petitioner, Harvey J. Engel, has obtained income as a result of his investments through Stewart's services. However, the record does not establish that Mr. Engel's investments through Stewart's services in 1975 generated any income.

CONCLUSIONS OF LAW

A. That "[t]he New York itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year..." with certain modifications. [Tax Law §615(a)].

B. That section 212 of the Internal Revenue Code provides, in part, that "[i]n the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year - (1) for the production or collection of income; (2) for the management, conservation, or maintenance of property held for the production of income...".

C. That during the period in issue, Treas. Reg. 1.212-1(g) provided:


"Fees for services of investment counsel, custodial fees, clerical help, office rent, and similar expenses paid or incurred by a taxpayer in connection with investments held by him are deductible under section 212 only if (1) they are paid or incurred by the taxpayer for the production or collection of income or for the management, conservation, or maintenance of investments held by him for the production of income; and (2) they are ordinary and necessary under all the circumstances, having regard to the type of investment and to the relation of the taxpayer to such investment."

D. That the Audit Division erred in disallowing petitioners' itemized deduction for investment advisory fees and services for the taxable year 1975 (Internal Revenue Code §212(1) and (2); Treas. Reg. 1-212-1(g)).

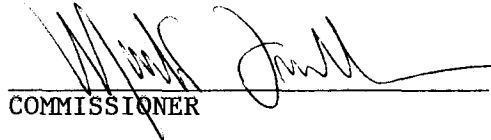
E. That the petition of Harvey J. Engel and Janine Engel is granted and the Notice of Deficiency issued April 13, 1979 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER