

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Martin Antonelli :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under Article :
22 of the Tax Law, New York City Personal Income :
Tax under Chapter 46, Title T of the Administrative :
Code of the City of New York and New York City :
Nonresident Earnings Tax under Chapter 46, Title U :
of the Administrative Code of the City of New York :
for the Year 1981. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 4th day of April, 1985, he served the within notice of Decision by certified mail upon Martin Antonelli, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin Antonelli
7004 Blvd East
Guttenberg, NJ 07093

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
4th day of April, 1985.

David Parchuck

Anne M. O'Hagerty

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Martin Antonelli :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under Article :
22 of the Tax Law, New York City Personal Income :
Tax under Chapter 46, Title T of the Administrative :
Code of the City of New York and New York City :
Nonresident Earnings Tax under Chapter 46, Title U :
of the Administrative Code of the City of New York :
for the Year 1981. :
_____ :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 4th day of April, 1985, he served the within notice of Decision by certified mail upon Alan Jacobs, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan Jacobs
440 Merrick Rd.
Oceanside, NY 11572

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
4th day of April, 1985.

David Parchuck

Annice A. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

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

April 4, 1985

Martin Antonelli
7004 Blvd East
Guttenberg, NJ 07093

Dear Mr. Antonelli:

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 & 1312 of the Tax Law and Chapter 46, Titles T and U of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Alan Jacobs
440 Merrick Rd.
Oceanside, NY 11572
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MARTIN ANTONELLI	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law, New York City	:	
Personal Income Tax under Chapter 46, Title T	:	
of the Administrative Code of the City of New	:	
York and New York City Nonresident Earnings Tax	:	
under Chapter 46, Title U of the Administrative	:	
Code of the City of New York for the Year 1981.	:	

Petitioner, Martin Antonelli, 7004 Boulevard East, Guttenberg, New Jersey 07093, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law, New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1981 (File No. 46889).

A formal hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 19, 1984 at 10:30 A.M., with all briefs to be submitted by November 19, 1984. Petitioner appeared by Alan Jacobs. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed partnership losses totalling \$69,300.00.

FINDINGS OF FACT

1.(a) Petitioner herein, Martin Antonelli, timely filed a New York State and City resident income tax return for 1981 indicating that he was a resident of New York State and New York City from January 1, 1981 to September 30, 1981 and a nonresident of the State and City for the remainder of the year. In the computation of his total income earned during the period of his residency in New York State and New York City, petitioner deducted partnership losses totalling \$69,300.00. On his income tax return for the resident period, petitioner sought a refund of \$4,070.57.

(b) Petitioner also filed a New York State nonresident income tax return for 1981 and a New York City nonresident earnings tax return for 1981 for the period of his nonresidence (October 1, 1981 to December 31, 1981). On his New York State nonresident return, petitioner claimed a refund of \$2,158.08.

2. The Audit Division did not process the refunds as requested on petitioner's resident and nonresident income tax returns, electing to first audit said returns. As the result of its examination, the Audit Division, on February 14, 1983, issued a Statement of Audit Changes to petitioner for 1981. Numerous adjustments were proposed by the Audit Division on the aforementioned Statement of Audit Changes; however, petitioner contests only that portion of said Statement of Audit Changes which attributes the \$69,300.00 of partnership losses to his period of nonresidence and thereafter considers said partnership losses as not entering into the computation of New York income since said partnership losses were not derived from or connected with New York sources.

3. Based on the Statement of Audit Changes, the Audit Division, on July 21, 1983, issued a Notice of Deficiency to petitioner for 1981, proposing additional tax due of \$3,549.73, plus interest of \$539.21, for a total allegedly

due of \$4,088.94. On September 27, 1983, petitioner timely filed a petition for a redetermination of the deficiency dated July 21, 1983.

4. Sometime prior to 1981, petitioner had invested certain funds as a limited partner in ten separate real estate limited partnerships. All ten partnerships were involved in the development and sale of real property located in the State of California and the general partner of all ten partnerships was one Michael Van Uithoven and/or Van Uithoven Properties.

5. On December 20, 1981, petitioner wrote to the State of California stating that:

"I am one of the many limited partners that has been defrauded out of a considerable sum of money by the above individual (Michael Van Uithoven). Van Uithoven has not communicated with me for over 2 years, despite repeated attempts on my part to reach him by phone and letter. He has sold his residence/office and nobody can find him. He has obviously ran off with everyone's investments... He has sold properties illegally (without consent of the limited partners) and has not given anybody any money. Detailed below are the names of the limited partnerships that I am involved in, and the amount of my participation:

Locust	\$ 6,000.00
Rainbow	6,000.00
Palomar	6,400.00
Saratoga	5,000.00
Oakstream I	7,600.00
Oakstream II	7,100.00
Acacia	14,200.00
Twin Oaks 27	6,000.00
Magee	5,000.00
Fallbrook Country Estates	6,000.00
Total Loss	<u>\$69,300.00"</u>

6. On several occasions, the Audit Division had requested that petitioner furnish the "...inclusive dates of the taxable year of each partnership." Petitioner did not provide this information and the Audit Division, therefore, considered all ten partnerships as calendar year partnerships. The Audit Division maintains that since partnership income or loss is treated as if distributed on the last day of the partnership year, the \$69,300.00 of partner-

ship losses were attributable to petitioner's nonresident period. Since the partnership losses were derived from real property having a situs outside of New York State, the Audit Division considered said losses as not being derived from or connected with New York sources and, therefore, not deductible by petitioner on his nonresident return.

7. Petitioner argues that all ten partnerships ceased to exist in the early part of 1981 when it was discovered that there were no partnership assets and all efforts to locate the general partner proved fruitless. For this reason, petitioner asserts that the partnership losses were attributable to his resident period and, therefore, properly deductible on his 1981 New York State and City resident income tax return.

8. No evidence was adduced at the hearing held herein to substantiate the taxable year of each of the ten partnerships in question. Partnership returns were not submitted in evidence nor did petitioner present any of the partnership agreements. No credible evidence was presented to show that the partnerships in question discontinued operations in 1981 and that no part of any business, financial operation or venture of the partnerships were carried on in 1981.

CONCLUSIONS OF LAW

A. That 20 NYCRR 148.6 provides, in pertinent part, that:

"Where a member of a partnership changes his status from resident to nonresident or vice versa, his distributive share of partnership income, gain, loss and deduction shall be included in the computation of his taxable income for the portion of the taxable year in which or with which the taxable year of the partnership ends, and treatment of his distributive share for New York income tax purposes shall be determined by his status as a resident or nonresident at such time."
[Also see Internal Revenue Code section 706(a).]

By virtue of section T46-197.0(a) of Title T of the Administrative Code of the City of New York and 20 NYCRR 290.2, the above cited regulation is

applicable to the taxes imposed pursuant to Title T of the Administrative Code of the City of New York.

B. That section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York each place the burden of proof upon petitioner except in three specific instances, none of which are at issue herein. Petitioner has failed to produce any evidence to show that the ten partnerships in question were not reporting income and losses on a calendar year basis. Furthermore, petitioner failed to submit any credible evidence to show that any of the ten partnerships in dispute terminated its taxable year before he became a nonresident of New York State and New York City. See Internal Revenue Code section 708 and Treasury Regulations §1.708-1.

Since the partnerships involved herein are all on a calendar year basis and since petitioner was a nonresident of New York State and New York City on December 31, 1981, all income and losses generated from said partnerships are attributable solely to the nonresident period (Kritzik v. Gallman, 41 A.D.2d 994).

C. That petitioner's losses from the ten limited partnerships amounting to \$69,300.00 cannot be deducted in computing New York source income earned in the nonresident period since said losses were not derived from or connected with New York State and City sources within the meaning and intent of sections 637(a)(1), 632(a)(1), and 632(b)(1) of the Tax Law; 20 NYCRR 134.1; section U46-1.0(f) of Title U of the Administrative Code of the City of New York; and 20 NYCRR Appendix 20 §1-7.

D. That the petition of Martin Antonelli is denied; and that the Notice of Deficiency dated July 21, 1983 is sustained, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1985


PRESIDENT


COMMISSIONER


COMMISSIONER