

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED G. VANDERBILT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income and :  
Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ 1966. :

State of New York  
County of Albany

Bruce Batchelor , 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 13th day of January , 1977, she served the within  
Notice of Decision by (certified) mail upon Alfred G. Vanderbilt

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Alfred G. Vanderbilt  
P.O. Box 336  
Westbury, New York 11590

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

13th day of January , 1977.

Bruce Batchelor

Janet Nash

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED G. VANDERBILT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income and :  
Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ 1966.:

State of New York  
County of Albany

Bruce Batchelor , 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 13th day of January , 1977, she served the within  
Notice of Decision by (certified) mail upon Richard J. Taylor

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Richard J. Taylor, Esq.  
Gasser & Hayes  
One Chase Manhattan Plaza  
New York, New York 10005

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

13th day of January , 1977.

Bruce Batchelor

James H. Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

January 13, 1977

TELEPHONE: (518) **457-1723**

Mr. Alfred G. Vanderbilt  
P.O. Box 336  
Westbury, New York 11590

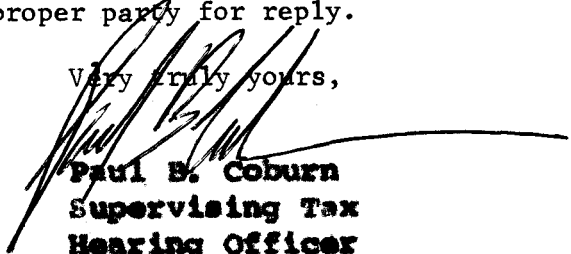
Dear Mr. Vanderbilt:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690 & 722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
ALFRED G. VANDERBILT	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income and	:	
Unincorporated Business Tax under	:	
Article 22 and 23 of the Tax Law for	:	
the Year 1966.	:	

---

Alfred G. Vanderbilt filed a petition under sections 722 and 689 of the Tax Law for the redetermination of a deficiency issued June 28, 1971, with respect to the year 1966 in the amount of \$9,730.80 for personal income tax, \$3,308.71 for unincorporated business tax and \$3,287.65 interest on both taxes for a total of \$16,327.16 under Articles 22 and 23 of the Tax Law.

A hearing was duly held on March 27, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Richard J. Taylor, Esq. of Gasser & Hayes. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq. The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are (A) whether an installment payment received in 1966 from a 1958 sale is taxable and (B) the proper method of allocating between states the income of a horse breeding and racing farm.

FINDINGS OF FACT

1. Petitioner has always been and remains a resident of New York State.

2. In September, 1958, petitioner, his wife and other family members sold a 9,000 acre parcel of land in Charlotte County, Florida, to land developers. This land had been held in a tenancy-in-common and had been used in cattle ranching and the raising of crops under the name "Vanderbilt and Vanderbilt, trading as Two-V Ranch." Petitioner realized a substantial gain on said sale. He chose to report such gain for Federal tax purposes on the installment method and at capital gain rates. Petitioner did not report such gains for New York tax purposes in 1958. Furthermore on advice of counsel, he did not elect in 1958 to use an installment basis for reporting income to New York State.

3. An installment payment on the 1958 sale of the Florida land was received in 1966. The portion of said installment taxable to the Federal Government was \$194,616.13. Thus, after the capital gain deduction, the sum of \$97,308.07 is included in petitioner's Federal taxable income as a result of the 1958 sale. Deeming this not taxable for New York purposes, petitioner had subtracted this from his income in reporting for New York purposes. The deficiency in personal income tax in issue is based entirely in deeming this capital gain to be New York income in 1966.

4. In 1966, petitioner operated as a business, the Sagamore Farm, which was located in Glyndon, Maryland. This was a racing stable which raced horses at tracks all over the United States. The Maryland farm was the only location where this business owned real estate, had employees or, so far as the record shows, received its cash receipts. The only activity of the business in New York was racing horses at New York tracks and the incidental boarding of the horses while they were at the New York tracks. The horses themselves were outside of New York more than they were in New York. The farm had earnings from winnings, stud fees, sale of fertilizer, the boarding of horses and blacksmith fees. It also bred and sold horses which was usually at a loss. The last year when it made a profit on breeding was in 1957 when it syndicated "Native Dancer."

5. Petitioner reported as New York income, only an allocable share of its earnings from racing. Total winnings were \$131,612.50, direct expenses were \$45,904.37, indirect expenses were \$124,727.79 and a net loss was computed of \$39,019.66. Petitioner allocates this loss on the basis of the dollar value of its winnings in New York State divided by the dollar value of its winnings everywhere, a ratio of 63.13%.

6. The deficiency in issue for unincorporated business tax is based entirely upon rejecting the allocation formula used by the petitioner on the grounds that it does not give a fair and equitable distribution of income to New York State. A different allocation is computed on the following basis: The racing, breeding and selling of horses are considered to be a single business. The profit from racing and breeding of \$67,122.56 was added to a "profit" from the sale of horses of \$130,275.00 for a total profit of \$197,397.56. (The computation of the profit from the sale of horses is not in the record.) This was allocated to New York by a two factor formula made up of the races run in New York and everywhere and the receipts received in New York and everywhere. The racing ratio is 93/122 or 76.23%. The receipts ratio was computed by adding New York racing

winnings of \$83,687.50 to New York "receipts" from the sale of horses of \$60,900.00 for a total of \$143,987.50 and dividing by the sum of total racing winnings of \$598,123.33 and total receipts from the sale of horses of \$215,502.00 for a total of \$813,623.33. (The record does not show how the location of the receipts in the formula were specified.) This ratio as so computed is 17.70%. The average of the two ratios is 46.97% and the income so allocated to New York amounts to \$92,717.63.

7. The method of allocation proposed by the auditor if applied to earlier years would result in lower amounts of New York income and New York taxes. This decrease in income would completely offset any income in those years and would further result in net operating loss carry forwards to the year in issue in amounts in excess of the deficiency here in issue.

#### CONCLUSIONS OF LAW

A. The gain on the sale of the Florida cattle ranch may be subtracted under section 612(c)(5) of the Tax Law from Federal adjusted gross income since such gain was reportable under article 16 of the Tax Law in 1958. The gain was characterized as a capital gain for Federal purposes under section 1231 of the Internal Revenue Code.



However, New York had no comparable provision and the property sold would not have been a capital asset under New York law in 1958 (see Reg. 20 NYCRR 265.2) and this would not be subject to a capital gains tax. The gain was, therefore, reportable for normal tax purposes but the normal tax for 1958 was forgiven as part of a charge by New York to a pay-as-you-go tax system. There is further no reason to suppose that petitioner would have elected an installment basis for New York purposes so that any New York income would have occurred in 1958 and not in 1966.

B. The allocation formula used by the petitioner is adequate. No reason has been given as to why it would not be fair and equitable. In fact the allocation formula proposed by the auditor is obviously itself inherently unfair and inequitable. The use of number of races instead of racing winnings is not appropriate where racing is engaged in not as a hobby but as a business. More importantly the use in the other proposed factor of receipts alone completely ignores the very large expenses incurred outside of New York to earn those receipts.

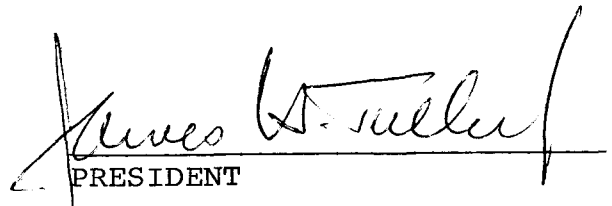
C. Even if the proposed allocation was correct, the petitioner may apply the same theory to previous years to compute net operating loss carryovers for use as an offset against the proposed deficiency. An offset is necessary to prevent inconsistency. No question has been raised here as to a right to a refund.

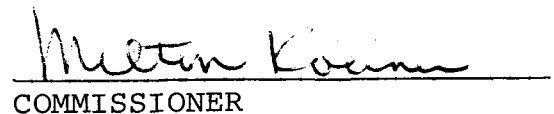
DECISION

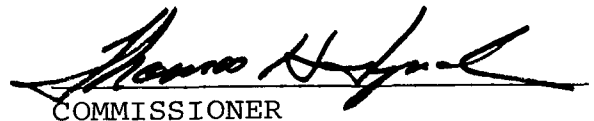
The deficiency in issue is erroneous in its entirety and is cancelled.

DATED: Albany, New York  
January 13, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N. Y. 12227



Unclassified +  
Addressed to  
Insufficient Address  
No such street—number  
No such office in state  
Do not return in this envelope

Mr. Alfred G. Vanderbilt  
P.O. Box 336  
Westbury, New York 11590

OFFICE OF THE  
TAX APPEALS BUREAU

RECEIVED  
JUN 10 1976  
TAX APPEALS BUREAU

*Hand left No Address +*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED G. VANDERBILT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income & Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year ~~(s) or Period(s)~~ 1966. :

State of New York  
County of Albany

Bruce Batchelor , 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 18th day of March , 1977, she served the within  
Notice of Decision by (certified) mail upon Alfred G. Vanderbilt  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Alfred G. Vanderbilt  
C/O Glasser  
1 Chase Manhattan Plaza  
New York, NY 10005  
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

18th day of March , 1977.

Bruce Batchelor

Janet Mack