

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ramapo Manor Nursing Center :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1974 - 1976. :

AFFIDAVIT OF MAILING

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Ramapo Manor Nursing Center, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ramapo Manor Nursing Center
Cragmere Rd.
Suffern, NY 10901

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
18th day of June, 1982.

Cornie A. Haglund

[Signature]

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Ramapo Manor Nursing Center :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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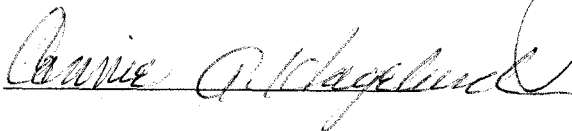
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1982, he served the within notice of Decision by certified mail upon Maury Cartine the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

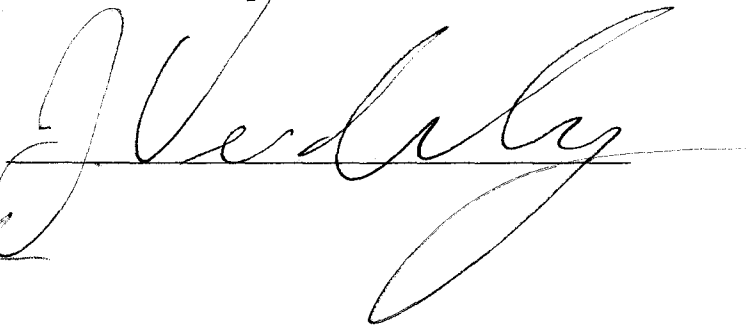
Maury Cartine
Rothstein, Kass & Co., P.C.
225 Millburn Ave.
Millburn, NJ 07041

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 June, 1982.


Carrie A. Magelund



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

June 18, 1982

Ramapo Manor Nursing Center
Cragmere Rd.
Suffern, NY 10901

Gentlemen:

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) 722 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
Maury Cartine
Rothstein, Kass & Co., P.C.
225 Millburn Ave.
Millburn, NJ 07041
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RAMAPO MANOR NURSING CENTER
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1974,
1975 and 1976.

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DECISION

Petitioner, Ramapo Manor Nursing Center, Cragmere Road, Suffern, New York 10901, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1974, 1975 and 1976 (File No. 29055).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 2, 1981. Petitioner, Ramapo Manor Nursing Center appeared by Maury Cartine, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner met the 80 percent common interest rule pursuant to section 706(2)(b) of the Tax Law and is, therefore, entitled to carryback losses for the years 1974, 1975 and 1976.

FINDINGS OF FACT

1. Petitioner, Ramapo Manor Nursing Center, a partnership located in New York State, timely filed a New York State Partnership Return for the year 1977, on which a net operating loss was reported.

2. On May 26, 1978 the Audit Division received a claim for refund from petitioner on which the net operation loss of 1977 was carried back to the years 1974, 1975 and 1976. The carryback losses resulted in refund claims of unincorporated business taxes of \$1,524.00 for 1974, \$1,626.00 for 1975 and \$459.00 for 1976.

3. On May 8, 1979 the Audit Division disallowed in full petitioners refund claims for the years 1974, 1975 and 1976 for the following stated reasons:

"In order for a partnership to carryback a net operating loss deduction, the partners in the loss year are required to have at least an 80% interest in common with the partners in the carryback years."

"Since partners A. Glicksman and N. Kluger became Estates in 1977, the partners do not meet the 80% test in other of the carryback years, as they were not Estates in those years."

4. The partnership interests of the members of the Ramapo Manor Nursing Center for the years 1974, 1975 and 1976 were as follows:

<u>PARTNERS</u>	<u>1974 & 1975</u>	<u>1976</u>
A. Glicksman	13.3%	13.33%
L. Kluger	25.0%	41.67%
N. Kluger	45.0%	45.00%
A.H. Kupersmith	16.7%	- 0 -

Partner A.H. Kupersmith sold his interest as of January 1, 1976. Partners A. Glickman, L. Kluger and N. Kluger maintained an interest of 83.3% for 1974 and 1975, and 100% for 1976.

5. On June 6, 1977 partner N. Kluger died and on December 14, 1977 partner A. Glickman died. The partnership interests of the deceased partners were subsequently assumed by their respective estates.

The New York State Partnership Return filed for the year 1977 reported the following partnership interests:

<u>PARTNERS</u>	<u>1977</u>
Estate of A. Glickman	13.33%
L. Kluger	41.67%
Estate of N. Kluger	45.00%

6. Petitioner contended that since the partnership interests were succeeded by the estates of A. Glickman and N. Kluger it should be regarded as having common interests for purposes of the 80% rule of section 706(2)(b) of the Tax law. In the alternative, petitioner proposed that the loss should be determined as of June 6, 1977, the day N. Kluger died and carryback losses allowed on a prorated basis.

CONCLUSIONS OF LAW

A. That section 62(4) of Article 6 of the New York Partnership Law provides that the dissolution of a partnership is caused "by the death of any partner" (Commissioner v. Waldman's Estate (1952, CA2) 196 F2d 83).

B. That section 60 of Article 6 of the New York Partnership Law defines the dissolution of a partnership as "the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business". In addition, it is noted that the estate and/or executor of a dead partner has no right to participate in or interfere with the winding up process by the surviving partner. The only right of the executors of a deceased partner is to demand an accounting from the surviving partner upon completion of the winding up of its affairs (Niagara Mohawk Power Corp. v. Silbergeld (1968) 58 Misc.2d 285, 294 N.Y.S.2d 975). Accordingly, the Estates of A. Glickman and N. Kluger can not be considered synonymous to A. Glickman and N. Kluger as member partners of the Ramapo Manor Nursing Center.

C. That petitioner, Ramapo Manor Nursing Center, is not entitled to a net operating loss carryback to the years 1974, 1975 and 1976 within the meaning and intent of section 706(2)(b) of the Tax Law.

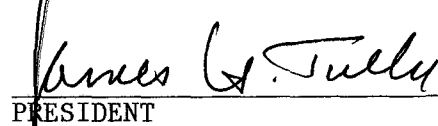
D. That Article 23 of the Tax Law does not provide for the allowance of carryback losses on a prorated basis due to a change in partnership interest.

E. That the petition of the Ramapo Manor Nursing Center is denied and the disallowance of petitioner's refund claims for the years 1974, 1975 and 1976 is sustained.

DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER