

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN M. & ATHINA CARRAS

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1956

State of New York
County of Albany

Lynn Wilson, 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 29th day of November, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon JOHN M. & ATHINA CARRAS (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John M. and Athina Carras
c/o Anthony N. Zock
19 Rector Street
New York, New York 10006
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

29th day of November, 1972

Joyce S. Van Patten

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or
a Refund of Personal Income
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State of New York
County of Albany

Lynn Wilson, 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 29th day of November, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon ANTHONY N.

ZOCK (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Anthony N. Zock
c/o Zock, Petrie, Sheneman & Reid
19 Rector Street
New York, New York 10006

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

29th day of November, 1972.

Joyce S. Van Patten

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STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Lynn Wilson, 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 29th day of November, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon MEYER JOSEPHY, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Meyer Josephy, C.P.A.
19 Rector Street
New York, New York 10006

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

29th day of November, 1972

Joyce S. Van Patten

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
November 29, 1972

John M. and Athina Carras
c/o Anthony H. Rook
19 Rector Street
New York, New York 10006

Dear Mr. and Mrs. Carras:

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

Please take further notice that pursuant to **section 373**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel C. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
JOHN M. and ATHINA CARRAS	:	DETERMINATION
for Revision or for Refund of Personal	:	
Income Taxes under Article 16 of the	:	
Tax Law for the Year 1956.	:	

John M. and Athina Carras filed an application under section 374 of the Tax Law for revision of an assessment of personal income taxes under Article 16 of the Tax Law for the year 1956. Said application was denied and a hearing was demanded and duly held before Nigel G. Wright, Hearing Officer, on June 22, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City. Anthony N. Zock, Esq. represented the applicants. Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the validity of an assessment based upon audit changes proposed by the Federal Government.

FINDINGS OF FACT

1. The applicant, Mr. Carras, was the sole stockholder of Tini Steamship Co., Inc., which was later renamed Ocean Tankers, Inc., a Delaware Corporation.

2. Ocean Tankers, Inc. owned as its principal asset all of the stock of Ocean Enterprises Co., Ltd. a Liberian corporation, which had a book value and cost basis to Ocean Tankers of \$178,893.16. In September, 1956, Ocean Tankers' other assets totaled \$48,850.00.

Its liabilities totaled \$617,912.00 of which \$615,496.00 was due to J.M. Carras, Inc. As so computed, there was a deficit of \$390,168.00,

3. Ocean Enterprises Co., Ltd. owned as its principal asset a ship, the S.S. Christine, later renamed Alexandra. The nature of its other assets and the liabilities are not in evidence.

4. In April, 1956, the ship was sold for \$1,020,000.00 with delivery to be made in July, 1956. On July 20, 1956, applicant paid the sum of \$616,673.17 to J.M. Carras, Inc. by a check, a copy of which is in evidence and which allegedly represents repayment of the liabilities of Ocean Tankers, Inc. On August 20, 1956, Ocean Enterprises filed a certificate of dissolution in Liberia but its assets were not distributed until October 17, 1956. On September 19, 1956, Ocean Tankers had formally dissolved.

5. On its tax return for 1956, applicant, Mr. Carras, reported a liquidation distribution of \$401,266.66 on his shares of Ocean Tankers, Inc. and a cost basis of \$1,250.00 for a gain of \$400,016.66. Applicant reported no transaction with respect to Ocean Enterprises, Ltd. He did report another gain of \$352,225.71 with respect to an Oro Navigation Company but that does not appear to be in dispute. The total capital gains reported were \$752,242.37.

6. A Federal deficiency notice was issued on December 16, 1959, showing a net deficiency of \$272,064.40 assessed against applicant not as the principal taxpayer but as a transferee of Ocean Tankers, Ltd. This deficiency notice found that Ocean Tankers had realized a capital gain on the liquidation of its subsidiary Ocean Enterprises, Co., Ltd. computed as follows: Liquidating dividend, \$1,267,150.76 less the cost basis of \$178,893.16 for a net gain of \$1,098,257.60.

7. The applicant contested the Federal deficiency in the U.S. Tax Court by a petition dated March 11, 1960 claiming in part that the liquidation of Ocean Enterprises into Ocean Tankers was not taxable by reason of I.R.C. section 332, that there would be no gain to Ocean Tankers, since Ocean Tankers was liquidated under a plan to which I.R.C. section 337 applied, and that Ocean Tankers had been previously liquidated so that applicant owned the shares of Ocean Enterprises at the time the latter was liquidated.

8. A Federal deficiency notice dated March 18, 1960 issued against applicant, Mr. Carras, found a correct capital gain of \$1,057,656.18 and correct ordinary income of \$12,840.74 which resulted in additional ordinary income of \$1,500.00 and additional capital gain of \$305,413.81 over the amounts shown on the return. This deficiency notice is not in evidence, but is referred to by a later undated Federal audit statement which is in evidence. This audit statement recites the above figures from the March 18, 1960 deficiency notice and finds additional capital gains by reason of the constructive receipt of \$616,673.17. This results in a total corrected capital gain figure of \$1,674,329.33, for a total additional capital gain of \$922,086.96 over that shown on the return. (If all of this was attributable to transactions relating to Ocean Tankers, then the total capital gain on such transactions as found would be \$1,322,103.62.) The deficiency in tax found by the audit statement was \$230,885.37. There is no reference in this audit statement to the deficiency notice of December 16, 1959. There is no indication that this liability was that of a transferee.

9. Applicant paid a Federal assessment by a check for \$307,495.03, covering basic tax of \$230,885.37 and interest of \$76,609.66. This is clearly an acquiescence to the findings of the Federal audit statement referred to in paragraph seven.

10. The notice of additional assessment for New York personal income tax, here in issue, is dated December 19, 1967, and finds additional normal tax of \$105.00 on additional ordinary income of \$1,500.00, which is not here disputed, and also finds additional capital gains tax of \$22,273.04 on additional capital gains of \$922,086.96. This assessment is clearly based upon the Federal audit statement referred to in paragraph seven and was issued after the failure of applicant to answer a letter requesting further information as to Federal changes.

11. The taxpayer, Mr. Carras, takes the position in his application that the New York assessment is explained by two items which he attempts then to explain away. He states that he received \$1,314,509.22 on liquidations and that proper deductions from this figure would include \$616,673.17 in liabilities assumed and paid \$305,495.03 in Federal taxes paid as a transferee on behalf of a liquidated company. This results in a net amount realized on liquidations of \$392,341.02. Since he paid New York taxes on a computed gain of \$40,266.66, he alleges there is no additional tax due. This explanation has been made only with reference to the transferee assessment of December 16, 1959. It is hereby found that for lack of evidence, the said transferee notice has no relevance to the audit statement on which the New York deficiency was based, that the \$305,495.03 was paid on behalf of applicant personally and not as transferee, and that the applicant was in constructive receipt of the \$616,673.17 item.

CONCLUSIONS OF LAW

A. The additional assessment here in issue must be sustained. It is based upon Federal audit findings, no adequate explanation has been made as to the nature of those findings and, to the extent that those findings have been attacked, no proof of their error has been offered. Applicant has failed to produce sufficient

documentation to directly explain the Federal audit statement on which the New York assessment is based and has failed to produce any proof that such audit statement is incorrect. Applicant's attempt to explain and prove his position indirectly by attempting to match figures of unknown origin which are not in fact identical on the basis of inferences and assumptions and without a full analysis and reconciliation of those figures amounts to mere speculation. He has not explained why direct documentation of his assertions is not available. In such a case, indirect argument to be adequate would have to exclude all possibilities unfavorable to the applicant. In this case where there has been complex multi-corporate transactions and where the possibilities of multiple assessments stemming from the same transactions have been explicitly put in issue at the Federal level, the explanation and proof offered is completely inadequate.

DETERMINATION


The application is denied. The notice of assessment in issue is affirmed and is due together with such interest, if any, as may be due under sections 376 and 377 of the Tax Law.

DATED: Albany, New York
November 29, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER