

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD B. and SARAH MC DONALD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1965 through 1970.

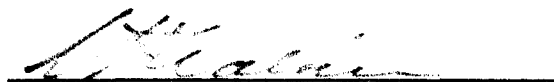
State of New York  
County of Albany

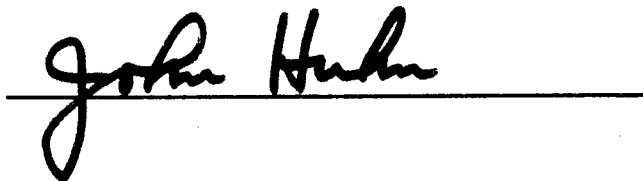
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 20th day of September , 1978 , she served the within  
Notice of Decision by (certified) mail upon Gerald B. and Sarah  
McDonald ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Gerald B. and Sarah McDonald  
76 Pavonia Avenue  
Arlington, New Jersey 07032  
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

20th day of September , 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD B. and SARAH MC DONALD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (a) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1965 through 1970.

State of New York  
County of Albany

John Huhn , 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 20th day of September , 1978, she served the within  
Notice of Decision by (certified) mail upon Charles F. Barrett, CPA

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Charles F. Barrett, CPA  
275 Madison Avenue  
New York, New York 10016

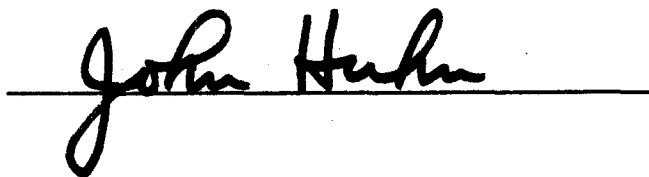
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

20th day of September , 1978.







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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

September 20, 1978

Mr. and Mrs. Gerald B. McDonald  
76 Pavonia Avenue  
Arlington, New Jersey 07032

Dear Mr. and Mrs. McDonald:

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 ~~(a)~~ **§90** 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**Joseph Chyrywat**  
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
GERALD B. and SARAH MC DONALD	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1965 through 1970.	:	
	:	

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Petitioners, Gerald B. and Sarah McDonald, 76 Pavonia Avenue, Arlington, New Jersey 07032, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1965 through 1970 (File No. 01341).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 2, 1977 at 9:15 A.M. Petitioners appeared by Charles F. Barrett, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioners correctly reported Gerald B. McDonald's proportionate share of partnership income for the years 1965 through 1970, and whether said income can be properly allocated to sources within and without New York State.

II. Whether the contributions claimed on petitioners' New York State nonresident income tax returns for the years in question are deductible and/or fully documented.

FINDINGS OF FACT

1. Petitioners, Gerald B. and Sarah McDonald, timely filed New York State nonresident income tax returns for the years 1965 through 1970.

2. The Income Tax Bureau conducted an audit of a partnership, in which petitioner Gerald B. McDonald was a member. Said audit resulted in the disallowance of an allocation of income to sources outside New York State and in an increase in partnership income. As a result of the aforementioned adjustments, the Income Tax Bureau issued a Statement of Audit Changes to petitioners on January 30, 1973, increasing the partnership income reported by Gerald B. McDonald and holding all partnership income to be income from New York State sources. The Statement also included an adjustment to contributions claimed as itemized deductions on petitioners' return. Accordingly, a Notice of Deficiency was issued to petitioners on March 26, 1973.

3. Gerald B. McDonald was a member of the partnership of Mulligan and McDonald, national publishers' representatives. The partnership maintained an office in New York, New York, and contended that it had offices in Detroit, Michigan, and Chicago, Illinois.

4. In each of the years at issue, petitioners included Gerald B. McDonald's proportionate share of partnership income on their income tax returns. They allocated said income to sources within and without New York State in the same proportion that the partnership had allocated it's income.

5. Petitioners, Gerald B. and Sarah McDonald, were to submit additional information in connection with the claimed contributions. However, they did not submit any additional information or documentation regarding this issue.

CONCLUSIONS OF LAW

A. That petitioners, Gerald B. and Sarah McDonald, did not correctly report partnership income for the years 1965 through 1970, since Gerald B. McDonald's proportionate share of partnership income from the partnership of Mulligan and McDonald (as determined in the State Tax Commission Decision in the Matter of the Petition of Mulligan and McDonald, signed on this date) is New York source income and, thus, may not be allocated to sources outside New York State.

B. That petitioners, Gerald B. and Sarah McDonald, have failed to meet the substantiation requirements for the claimed contributions, in accordance with Treasury Regulation section 1.274-5. They have also failed to sustain their burden of proof in accordance with section 689(e) of the Tax Law.

C. That the petition of Gerald B. and Sarah McDonald is denied and the Notice of Deficiency issued March 26, 1973 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER