

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Sheldon & Harriet Berdon :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the year 1972. :

State of New York

County of Albany

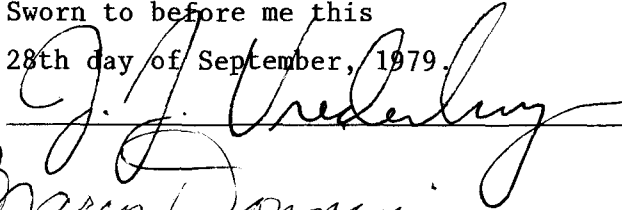

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Sheldon & Harriet Berdon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sheldon & Harriet Berdon
25 Cooper Rd.
Scarsdale, NY 10583

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
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Sheldon & Harriet Berdon :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the year 1972. :

State of New York
County of Albany

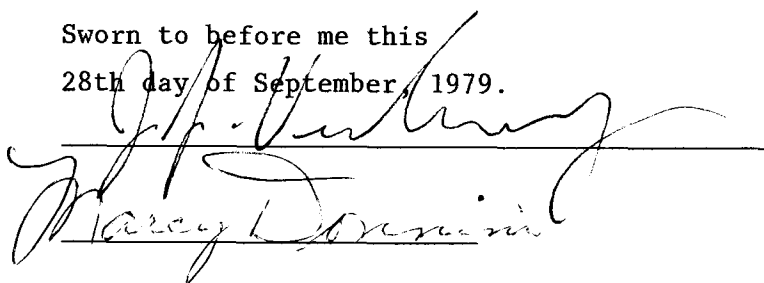
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Milton Pickman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Milton Pickman
Anchin, Block & Anchin
270 Madison Ave.
New York, NY 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
28th day of September, 1979.



J. P. Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Sheldon & Harriet Berdon
25 Cooper Rd.
Scarsdale, NY 10583

Dear Mr. & Mrs. Berdon:

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 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,

cc: Petitioner's Representative
Milton Pickman
Anchin, Block & Anchin
270 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SHELDON BERDON and HARRIET BERDON
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1972.

:
:
:
:
:
:
:

DECISION

Petitioners, Sheldon Berdon and Harriet Berdon, 25 Cooper Road, Scarsdale, New York 10583, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 14269).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1977 at 10:45 A.M. Petitioners appeared by Milton Pickman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner Sheldon Berdon properly claimed a deduction for interest expenses on his personal income tax return for 1972.

FINDINGS OF FACT

1. Petitioners, Sheldon Berdon and Harriet Berdon, timely filed New York State combined personal income tax returns (form IT-208) for 1972, on which petitioner Sheldon Berdon, the donee of a gift, deducted interest expense paid on a gift tax assessment against the donor's estate.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1972, on which it contended that the interest expense deduction which was claimed was actually the indebtedness of another; therefore, it was not deductible by petitioners. Accordingly, on January 26, 1976, the Bureau issued a Notice of Deficiency against petitioners for \$4,054.18 in personal income tax, plus \$846.35 in interest, for a total due of \$4,900.53.

3. Petitioners timely filed a petition for redetermination of the deficiency or for refund of personal income taxes due under Article 22 of the Tax Law for 1972.

4. Petitioners conceded to a \$300.00 adjustment which was made, in addition to the adjustment at issue.

5. Petitioner Sheldon Berdon was under an unconditional and legally enforceable obligation to pay part of the gift tax, plus interest, which had been assessed against the Estate of Etta M. Liebovitz, deceased.

6. The amount of gift tax and interest to be paid by petitioner Sheldon Berdon was arrived at by compromise between said petitioner and the estate.

CONCLUSIONS OF LAW

A. That the name of petitioner Harriet Berdon was incorrectly included on the Notice of Deficiency issued on January 26, 1976, and should be deleted therefrom.

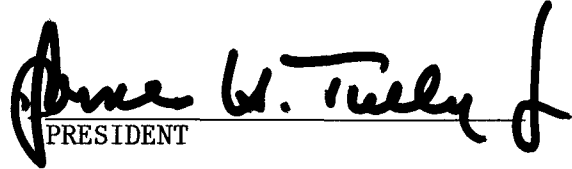
B. That the payment of interest on a gift tax assessment against an estate, by a donee having an unconditional and legally enforceable obligation to pay that assessment, is deductible by the donee under section 163 of the Internal Revenue Code.

C. That the petition of Sheldon Berdon and Harriet Berdon is granted, except insofar as it applies to the adjustment referred to in Finding of Fact "4"; therefore, the Notice of Deficiency is to be modified accordingly.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1979


PRESIDENT


COMMISSIONER


COMMISSIONER