

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
The Foristall Company :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law  
for the Years 1965-1967. :

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 9th day of November, 1979, he served the within notice of Determination by certified mail upon The Foristall Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Foristall Company  
15 Maiden Lane  
New York, NY 10038

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  
9th day of November, 1979.

Joanne Knapp

A large, stylized handwritten signature, likely of Jay Vredenburg, written in dark ink over a horizontal line.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
The Foristall Company :

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law  
for the Years 1965-1967. :

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 9th day of November, 1979, he served the within notice of Determination by certified mail upon Spencer V. Hinckley the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

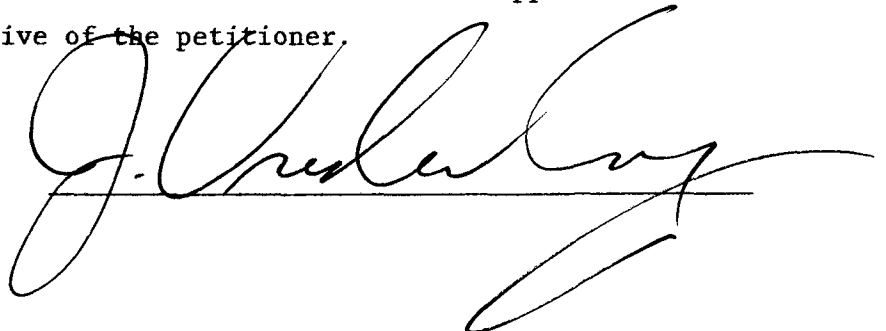
Mr. Spencer V. Hinckley  
271 North Ave.  
New Rochelle, NY

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  
9th day of November, 1979.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition of :  
The Foristall Company, and Thomas M. Foristall, :  
Helen M. Foristall, John S. Bowen, Doris W. :  
Bowen, Lynn E. Foristall, Mary L. Foristall, :  
John J. Foristall, Carolyn S. Foristall, :  
Norbert L. Foglietta, and Margaret A. Foglietta :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law :  
for the Years 1965-1967. :

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 9th day of November, 1979, he served the within notice of Determination by certified mail upon Spencer V. Hinckley 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. Spencer V. Hinckley  
271 North Ave.  
New Rochelle, NY

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  
9th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition of :  
THE FORISTALL COMPANY and THOMAS M. FORISTALL, :  
HELEN M. FORISTALL, JOHN S. BOWEN, DORIS W. :  
BOWEN, LYNN E. FORISTALL, MARY L. FORISTALL, :  
JOHN J. FORISTALL, CAROLYN S. FORISTALL, :  
NORBERT L. FOGLIETTA, AND MARGARET A. FOGLIETTA : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law :  
for the Years 1965-1967. :

---

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 9th day of November, 1979, he served the within notices of Determination by certified mail upon Spencer V. Hinckley the representative of the petitioners in the within proceedings by enclosing true copies thereof in securely sealed envelopes, addressed as described below and placed within a postpaid wrapper as follows:

Thomas M. & Helen M. Foristall  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

John S. & Doris W. Bowen  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

Lynn E. & Mary L. Foristall  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

John J. & Carolyn S. Foristall  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

Norbert L. & Margaret A. Foglietta  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

Wrapper Addressed to:  
Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

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  
9th day of November, 1979.

Joanne Knapp

J. Undermy

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

November 9, 1979

The Foristall Company  
15 Maiden Lane  
New York, NY 10038

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Spencer V. Hinckley  
271 North Ave.  
New Rochelle, NY  
Taxing Bureau's Representative

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

November 9, 1979

John J. & Carolyn S. Foristall  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Spencer V. Hinckley  
271 North Ave.  
New Rochelle, NY  
Taxing Bureau's Representative

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

November 9, 1979

Thomas & Helen Foristall  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Spencer V. Hinckley  
271 North Ave.  
New Rochelle, NY  
Taxing Bureau's Representative



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

November 9, 1979

John & Doris Bowen  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Spencer V. Hinckley  
271 North Ave.  
New Rochelle, NY  
Taxing Bureau's Representative

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

November 9, 1979

Lynn & Mary Foristall  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Spencer V. Hinckley  
271 North Ave.  
New Rochelle, NY  
Taxing Bureau's Representative

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

November 9, 1979

Norbert & Margaret Foglietta  
c/o Spencer V. Hinckley  
271 North Avenue  
New Rochelle, New York

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Spencer V. Hinckley  
271 North Ave.  
New Rochelle, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petitions	:	
of	:	
THE FORISTALL COMPANY and THOMAS M. FORISTALL,	:	
HELEN M. FORISTALL, JOHN S. BOWEN, DORIS W.	:	
BOWEN, LYNN E. FORISTALL, MARY L. FORISTALL,	:	DECISION
JOHN J. FORISTALL, CAROLYN S. FORISTALL,	:	
NORBERT L. FOGLIETTA, AND MARGARET A. FOGLIETTA	:	
for Redetermination of a Deficiency or for Refund	:	
of Personal Income and Unincorporated Business	:	
Taxes under Articles 22 and 23 of the Tax Law for	:	
the Years 1965, 1966 and 1967.	:	

---

Petitioners, The Foristall Company and Thomas M. Foristall, Helen M. Foristall, John S. Bowen, Doris W. Bowen, Lynn E. Foristall, Mary L. Foristall, John J. Foristall, Carolyn S. Foristall, Norbert L. Foglietta and Margaret A. Foglietta, filed petitions for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1965, 1966 and 1967 (File No. 01916).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 16, 1971 at 10:45 A.M. and on March 23, 1972 at 1:30 P.M. Petitioners appeared by Spencer V. Hinckley, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan and Solomon Sies, Esqs., of counsel).

ISSUES

I. Whether the income reported by The Foristall Company for 1965, 1966 and 1967 was allocable to New York State for unincorporated business tax purposes.

II. Whether capital gains on the purchase and sale of securities held by The Foristall Company in the partnership name during 1965, 1966 and 1967, were subject to the New York State unincorporated business tax.

III. Whether expenses deducted by petitioner The Foristall Company, in connection with work done at home by the member partners, were ordinary and necessary business expenses.

IV. Whether the distributive share of partnership income received by the nonresident partners of The Foristall Company was allocable to New York State for personal income tax purposes.

#### FINDINGS OF FACT

1. Petitioner The Foristall Company filed New York State income and unincorporated business tax partnership returns for 1965, 1966 and 1967. Petitioners Thomas M. Foristall and Helen M. Foristall filed New York State combined income tax returns for said years; petitioners John S. Bowen and Doris W. Bowen filed New York State income tax nonresident returns for said years; petitioners Lynn E. Foristall and Mary L. Foristall filed New York State income tax resident returns for said years; petitioners John J. Foristall and Carolyn S. Foristall filed New York State income tax resident returns for said years; petitioners Norbert L. Foglietta and Margaret A. Foglietta filed New York State income tax nonresident returns for said years.

2. On March 16, 1970, the Income Tax Bureau issued a Statement of Audit Changes against The Foristall Company, imposing additional unincorporated business tax for 1965, 1966 and 1967, on the grounds that the homes of the two nonresident partners in New Jersey were not bona fide places of business; therefore, its allocation of partnership income was disallowed. The Income Tax Bureau also disallowed rental expense representing home expense of the partners of \$789.00 in 1965, \$1,789.56 in 1966 and \$1,930.00 in 1967, as not being ordinary and necessary.

In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency for \$1,919.28, plus interest of \$326.80.

3. On March 16, 1970, the Income Tax Bureau issued statements of audit changes against the individual partners. Said statements imposed additional personal income tax for 1965, 1966 and 1967, based on the adjustments to income resulting from the above-mentioned audit of The Foristall Company. In accordance with said statements of audit changes, the Bureau issued notices of deficiency against petitioners Thomas M. Foristall and Helen M. Foristall for \$107.16, plus interest of \$17.32, against petitioners John S. Bowen and Doris W. Bowen for \$784.85, plus interest of \$133.50, against petitioner Lynn E. Foristall for \$10.52, plus interest of \$2.47, against petitioners Lynn E. Foristall and Mary L. Foristall for \$44.71, plus interest of \$6.48, against petitioners John J. Foristall and Carolyn S. Foristall for \$33.40, plus interest of \$5.39, and against petitioners Norbert L. Foglietta and Margaret A. Foglietta for \$484.98, plus interest of \$80.67.

4. At the formal hearing held on December 16, 1971, petitioners moved to amend their petitions to include a claim for refund of unincorporated business tax paid by The Foristall Company on capital gains from the sale of securities held in the partnership name. Petitioners contended that the partnership was acting as nominee for purposes of these transactions. This claim was raised for the first time by petitioners at the formal hearing. There is nothing in the petitions or in the other documents submitted into evidence to indicate that petitioners intended to raise this issue at the formal hearing. The 1965, 1966 and 1967 partnership returns were filed on or about the 15th day of April of the respective succeeding years. The petitions for redetermination of a deficiency or for refund of unincorporated business tax and personal income tax for said years were filed on May 26, 1970.

5. The Foristall Company was a partnership composed of John S. Bowen, Thomas M. Foristall, Helen M. Foristall, John J. Foristall, Lynn E. Foristall and Norbert L. Foglietta during 1965, 1966 and 1967. The partnership agreement provided that the partnership business was to be carried on at 420 Lexington Avenue, New York, New York, and at 662 Jones Road, River Vale, New Jersey. The New Jersey address was the home of John S. Bowen, one of the partners. The company's stationery did not list the New Jersey address. Its office employees and its books were located solely in the New York office. There were no signs at the New Jersey address to indicate that it was a partnership office. The Foristall Company was listed in the Bergen County telephone directory at the River Vale, New Jersey, address. Some mail addressed to it was received at said address.

6. The Foristall Company was engaged in the business of financial public relations during 1965, 1966 and 1967. It prepared annual reports, press releases, stockholders' communications, interim reports, speeches, press conferences and other publicity for its corporate clients. It generally obtained its clients from references from other clients or investment bankers. Each partner had certain clients that he or she serviced. The clients were located throughout the United States. The partners generally went to the clients' offices when personal contacts were necessary. The clients rarely came to the partnership office in New York City, or to the homes of the partners.

7. Petitioners John S. Bowen and Doris W. Bowen resided at 662 Jones Road, River Vale, New Jersey, during 1965, 1966 and 1967. Petitioner John S. Bowen maintained one room in his home as an office. The office was equipped with a desk, filing cabinets, a typewriter, an adding machine, a telephone, a dictaphone and reference books. He spent one day a week, as well as evenings and weekends, in said office. He did his creative work, such as preparing

corporate reports and communications in his home office. He was the financial manager for the partnership and did investment analysis for it at his home. He was unable to do the creative work in the New York City office because of the noise. Petitioner John S. Bowen was paid a monthly allowance by The Foristall Company for a room used by him in his New Jersey home.

8. Petitioners Lynn E. Foristall and Mary L. Foristall resided at 1079 Hunter Avenue, Pelham Manor, New York, during 1965, 1966 and 1967. Petitioner Lynn E. Foristall maintained one room in his home as an office. The office was equipped with a desk, a telephone, a typewriter and reference books. He worked in his office at home each evening during the week for several hours, and on weekends for three or four hours. He did his creative writing and research at home. He was unable to do this work in the New York City office because it was too noisy and because the heat in the building was turned off after 5:00 P.M. during the week, and also on weekends. He was paid a monthly allowance by the company for a room he used in his home.

9. Petitioners Thomas M. Foristall and Helen M. Foristall resided in a five-room apartment located at 167 Center Street, New Rochelle, New York, during 1965, 1966 and 1967. Mr. Foristall maintained one room in the apartment as an office. The office was equipped with a telephone, a typewriter, a dictating machine and reference materials. He wrote and edited partnership material including a newsletter entitled, Investor Relations Newsletter. He did all of his work for the partnership at home. He was unable to come into the New York office to do his work because of an emphysema condition.

10. It was stipulated at the formal hearing that petitioners John J. Foristall and Carolyn S. Foristall would be bound for 1965, 1966 and 1967 by whatever decision the State Tax Commission reached, with reference to the other petitioners, on the issue of disallowance of the cost of maintaining offices at home, in view of the nominal amount involved.



11. Petitioners Norbert L. Foglietta and Margaret A. Foglietta resided at 50 South Drive, East Brunswick, New Jersey, during 1965, 1966 and 1967. Petitioner Norbert L. Foglietta maintained one room in his home as an office. The office was equipped with a desk, filing cabinets, bookcases, a typewriter, a telephone and a calculating machine. He spent an average of two days a week, two or three nights a week and occasional weekends, working on partnership business in said home office. He did creative work in this office such as writing corporate reports, press releases and speeches. He was paid a monthly allowance by the company for his use of a room in his home.

12. The State of New Jersey enacted an unincorporated business tax, effective June 17, 1966. The Foristall Company did not file New Jersey unincorporated business tax returns pursuant to said statute.

13. The Foristall Company also engaged in the purchase and sale of securities during 1965, 1966 and 1967. Capital gains resulting from said transactions were divided equally among the partners. The investments were managed by one of the partners and were made in the name of the partnership. With reference to these security transactions, the partnership acted as a principal and not as a conduit for the partners.

#### CONCLUSIONS OF LAW

A. That petitioner The Foristall Company did not maintain a regular place of business outside New York State during 1965, 1966 and 1967; therefore, all of its business income for unincorporated business tax purposes must be allocated to New York State, in accordance with the meaning and intent of section 707(a) of the Tax Law.

B. That since petitioner The Foristall Company did not have a regular place of business outside New York State during 1965, 1966 and 1967, all of the partnership income received by the nonresident partners during said period, for personal income tax purposes, must be allocated to New York State, in accordance

the meaning and intent of sections 632 and 637 of the Tax Law.

C. That the capital gains on the purchase and sale of securities by petitioner The Foristall Company constituted business income of the partnership. The income was subject to the unincorporated business tax since it resulted from the use of assets connected with the partnership business, and was not received solely by reason of the purchase and sale of property for its own account, in accordance with the meaning and intent of section 703(d) of the Tax Law.

D. That the expenses deducted by petitioner The Foristall Company in connection with work done at home by its partners constituted ordinary and necessary business expenses; therefore, petitioner is properly entitled to a deduction for said expenses.

E. That the petitions of The Foristall Company and its partners are granted to the extent of allowing a deduction for expenses of \$789.00 for 1965, \$1,789.56 for 1966 and \$1,930.00 for 1967; that the additional unincorporated business tax due from The Foristall Company for said years is reduced from \$1,919.28 to \$1,703.11, together with such interest as may be lawfully due; that the additional personal income tax due from petitioners Thomas M. Foristall and Helen M. Foristall for said years is reduced from \$107.16 to \$7.76, together with such interest as may be lawfully due; that the additional personal income tax due from petitioners John J. Foristall and Carolyn S. Foristall for said years is reduced from \$33.40 to \$2.39, together with such interest as may be lawfully due; that the additional personal income tax due from petitioners John S. Bowen and Doris W. Bowen for said years is reduced from \$784.85 to \$728.83, together with such interest as may be lawfully due; that the additional personal income tax due from petitioner Lynn E. Foristall for 1965 is reduced from \$10.52 to \$3.58, together with such interest as may be lawfully due; that

additional personal income tax due from petitioners Lynn E. Foristall and Mary L. Foristall for 1966 and 1967 is reduced from \$44.71 to \$15.22, together with such interest as may be lawfully due; that the additional personal income tax due from petitioners Norbert L. Foglietta and Margaret A. Foglietta for said years is reduced from \$484.98 to \$434.83, together with such interest as may be lawfully due; that the Income Tax Bureau is ordered to modify the notices of deficiency issued on March 16, 1970 to petitioners; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

**NOV 9 1979**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER