

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

October 9, 1979

Henry H. & Grace (deceased) Rice  
Greenwich Rd.  
Bedford, NY 10506

Dear Mr. Rice:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Jonathan Glasner  
David Berdon & Co.  
415 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Henry H. & Grace (deceased) Rice :

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

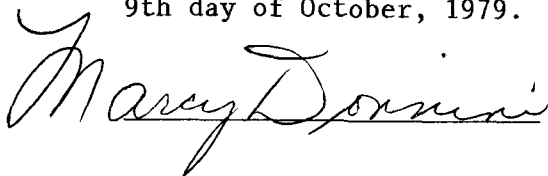
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Henry H. & Grace (deceased) Rice, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Henry H. & Grace (deceased) Rice  
Greenwich Rd.  
Bedford, NY 10506

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 October, 1979.

  
Mary Dominici



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Henry H. & Grace (deceased) Rice :

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 9th day of October, 1979, he served the within notice of Decision by certified mail upon Jonathan Glasner 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. Jonathan Glasner  
David Berdon & Co.  
415 Madison Ave.  
New York, NY 10017

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 October, 1979.

*Mary Donneni*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HENRY H. RICE and GRACE RICE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

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Petitioners, Henry H. and Grace Rice, Greenwich Road, Bedford, New York 10506, 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. 14514).

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 December 13, 1978 at 9:15 A.M. Petitioners appeared by Jonathan Glasner. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner Henry H. Rice realized a capital gain distribution from a partnership.

FINDINGS OF FACT

1. Petitioners, Henry H. and Grace Rice, timely filed a joint New York State personal income tax resident return for 1972, on which no capital gains or losses were reported.

2. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency and an explanatory Statement of Audit Changes to petitioner Henry H. Rice, which stated that he failed to report a capital gain distribution and the resulting modification required under section 612(b)(11) of the Tax Law.

3. Petitioner Henry H. Rice contended that on September 28, 1970, he purchased a 25% interest in the partnership of Court-Hawley Land Company ("the partnership"), by assuming approximately 25% in partnership liabilities. No evidence was submitted as to the terms and conditions of the purchase. A statement submitted with the petition was purported to be the partnership's balance sheet as of December 31, 1970. However, Mr. Rice was not listed as a partner on said statement, and there was no indication that a 25% interest in the partnership was sold or exchanged for the partial assumption of its liabilities.

4. Petitioner Henry H. Rice contended that in 1971, he transferred one-half of his partnership interest to another member of the partnership. No evidence was submitted as to the terms and conditions of this transfer.

5. A statement issued to Mr. Rice by a certified public accounting firm indicated that his distributed share of a long-term capital gain from the partnership during 1972 was \$27,611.19, and that "...this gain is based upon the basis of your interest as shown on the partnership books. This gain may be subject to an adjustment if your basis is different."

6. Mr. Rice contended that the proceeds of the sale which resulted in the aforementioned capital gain were used to satisfy the partnership liabilities, including that portion of the liability which he assumed. He reasoned that since he received no monetary award from the sale and since his basis was equal to or larger than the capital gain which was distributed, he did not realize a taxable capital gain.

7. Petitioner Henry H. Rice submitted a statement which he indicated was a schedule of partner's capital as of August 31, 1972. Said schedule listed him as a partner, and indicated capital gain income of \$27,611.00.

CONCLUSIONS OF LAW

A. That petitioner Henry H. Rice has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law, which requires him to establish that he did not realize a long-term capital gain, as distributed and reported by the partnership of Court-Hawley Land Company.

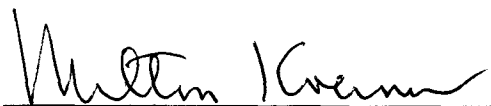
B. That the petition of Henry H. Rice and Grace Rice is denied and the Notice of Deficiency issued on February 24, 1976 for 1972 is sustained, together with such additional interest as may be lawfully owing.

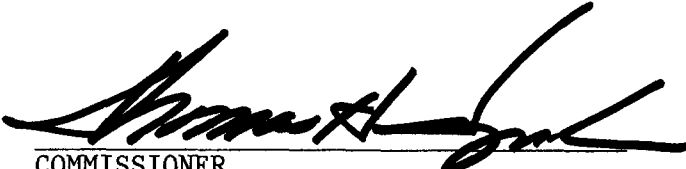
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
TAX APPEALS BUREAU

TO ..... Mr. Coburn .....

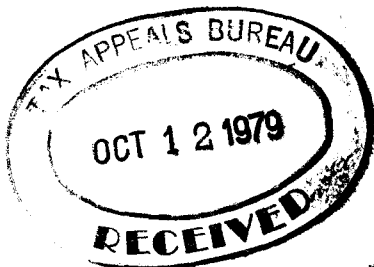
Better address. . . Remailed 10/18/79

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TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



Henry H. & Grace (deceased) Rice  
Greenwich Rd.  
Bedford, NY 10506

060-07-9613  
057-38-7298

76/04/30



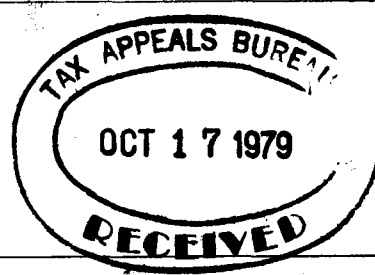


REQUEST FOR BETTER ADDRESS

Requested by  Lynn Luce	Unit Tax Appeals Bureau Bldg. 9 Rm. 107	Date of Request  10/12/79
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number 060-07-9613 057-38-7298	Date of Petition 76/04/30
Name Henry H. & Grace (deceased) Rice	
Address Greenwich Road, Bedford, NY 10506	



## Results of search by Files

<input checked="" type="checkbox"/> New address:	<i>210 - Hook Rd Bedford, N.Y. 10506</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by <i>PT Agnante</i>	Section <i>711</i>	Date of Search <i>10/16/79</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER