

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Frank N. & Minetta W. Kern :

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 Years 1973 - 1974. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Frank N. & Minetta W. Kern, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank N. & Minetta W. Kern
Puritan Rd.
Rye, NY 10580

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
3rd day of October, 1980.

Robbie Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Frank N. & Minetta W. Kern :

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 Years 1973 - 1974. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Joseph Coci the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

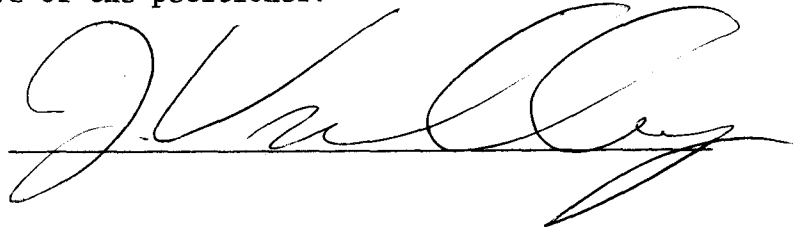
Mr. Joseph Coci
Reid & Priest, Esqs.
40 Wall St.
New York, NY 10005

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
3rd day of October, 1980.

Peterson Brink



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

October 3, 1980

Frank N. & Minetta W. Kern
Puritan Rd.
Rye, NY 10580

Dear Mr. & Mrs. Kern:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph Coci
Reid & Priest, Esqs.
40 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK N. KERN and MINETTA W. KERN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1973 and 1974.	:	

Frank N. Kern and Minetta W. Kern, Puritan Road, Rye, New York 10580 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 1973 and 1974 (File No. 19319).

A formal hearing was held before James Prendergast, Hearing Officer at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 22, 1979 at 1:30 P.M. Petitioners appeared by Reid & Priest, Esqs. (Joseph Coci, III, Esq. of counsel). The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether a partner in a New York City law firm must, in computing his New York State personal income tax, increase his Federal adjusted gross income by his pro rata share of the New York City unincorporated business taxes paid by the partnership.

FINDINGS OF FACT

1. Petitioners, Frank N. Kern and Minetta W. Kern, filed timely joint New York State income tax resident returns for the calendar years 1973 and 1974.

2. On March 28, 1977, the Audit Division issued a Notice of Deficiency and a Statement of Audit Changes against petitioners for the years 1973 and 1974 for income taxes due in the amount of \$1,665.60 plus interest.

3. The petitioners subsequently filed a timely petition for revision of the determination.

4. The deficiency asserted by the State is based on the fact that in both taxable years, petitioners, in computing the taxes due, failed to increase their Federal adjusted gross income by petitioner Frank N. Kern's pro rata share of the New York City unincorporated business taxes paid by the law firm of which he was a partner.

5. The petitioners' representative, in reply to the answer of the perfected petition, admitted "that petitioners did not include the amounts of \$5,835.00 for 1973 and \$5,269.00 for 1974 in their income for New York State Personal Income Tax Purposes...".

CONCLUSIONS OF LAW

A. That to compute New York State adjusted gross income of a resident individual, section 612(b)(3) of the Tax Law directs the taxpayer to add to his Federal adjusted gross income the amount of State and local income taxes which were deducted in determining Federal adjusted gross income and not credited against Federal income tax. That the New York City unincorporated business tax is such an income tax within the meaning and intent of section 612(b)(3) of the Tax Law.

B. That Section 617(a) of the Tax Law requires in part that in determining New York adjusted gross income of a resident partner, any modification described in subsections (b)(c) or (d) of section 612 which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for Federal income tax purposes, of the item to

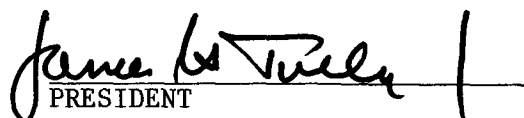
which the modification relates.

C. The petition of Frank N. Kern and Minetta W. Kern is denied and the Notice of Deficiency is sustained.

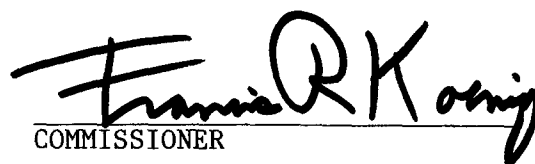
DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1980


PRESIDENT


COMMISSIONER


COMMISSIONER