

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Walter A. & Ruth Price Keve :

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 1961 - 1971. :

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 14th day of November, 1980, he served the within notice of Decision by certified mail upon Walter A. & Ruth Price Keve, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walter A. & Ruth Price Keve
18 Hillcrest Ave.
Cranford, NJ 07016

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
14th day of November, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Walter A. & Ruth Price Keve :
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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 14th day of November, 1980, he served the within notice of Decision by certified mail upon E. E. Finucan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

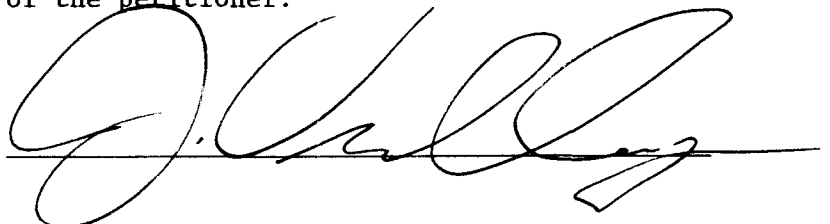
Mr. E. E. Finucan
Finucan & Greenwood
10 E. 40th St.
New York, NY 10016

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
14th day of November, 1980.

Deborah A Bank



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

November 14, 1980

Walter A. & Ruth Price Keve
18 Hillcrest Ave.
Cranford, NJ 07016

Dear Mr. & Mrs. Keve:

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
E. E. Finucan
Finucan & Greenwood
10 E. 40th St.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WALTER A. KEVE and RUTH PRICE KEVE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1961 through 1971.	:	

Petitioners, Walter A. Keve and Ruth Price Keve, 18 Hillcrest Avenue, Cranford, New Jersey 07016, 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 1961 through 1971 (File No. 01769).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1975 at 1:20 P.M. and continued on August 5, 1976 at 9:15 A.M. The hearing was continued to conclusion before Edward L. Johnson, Hearing Officer, on June 24, 1977 at 12:40 P.M. Petitioners appeared by E. E. Finucan, CPA. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner Walter A. Keve, a member partner of Van Alstyne, Noel & Co., properly allocated his distributive share of partnership income.

II. Whether petitioner Walter A. Keve was required to add to total income his share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co. for 1966 through 1969 and for 1971.

III. Whether petitioner Walter A. Keve was required to report his distributive share of partnership income/loss from Mawdsley, Sellas & Co., a Missouri partnership, for 1968 through 1971.

IV. Whether petitioner Walter A. Keve was entitled to deduct losses incurred from a joint venture which was engaged in oil and gas explorations during 1969 and 1970.

V. Whether petitioners were entitled to deduct a capital loss carryover from non-New York sources for 1969 and 1970.

FINDINGS OF FACT

1. Petitioners, Walter A. Keve and Ruth Price Keve, filed joint New York State income tax nonresident returns for 1961 through 1971, wherein petitioner Walter A. Keve reported his distributive share of partnership income received from Van Alstyne, Noel & Co.

2. Petitioner Walter A. Keve also was a member partner of Russell, McElnea & Co. and Mawdsley, Sellas & Co. during 1968 through 1971, and a member partner of three oil lease joint ventures in 1969. His share of partnership income/loss from Russell, McElnea & Co. is not at issue.

3. Petitioner Walter A. Keve signed consents fixing period of limitation upon assessment of personal income and unincorporated business taxes, which consents extended the period for assessment of personal income tax for 1961 through 1969, until April 15, 1974.

4. On November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1961 through 1971. The audit adjustments for 1970 resulted in an overpayment of tax. Said notice asserted personal income tax of \$5,362.00, penalty, pursuant to section 685(c) of the Tax Law, for 1968 of \$14.00, plus interest of \$1,863.33, for a total sum of \$7,239.33.

The Notice of Deficiency was issued, in part, as a result of a field audit of the partnership Van Alstyne, Noel & Co., wherein adjustments were made to the partnership allocation percentage which resulted in personal income taxes due from nonresident partners.

5. Mawdsley, Sellas & Co. was a partnership formed in the State of Missouri. It had two functions: the first was the financing of cattle and included such activities as investing money, borrowing money and making arrangements for various banking relationships in order to get enough money to buy the cattle; the second function was the actual cattle operation which included the purchasing of the animals, the selection of the feed yards in which they were kept, and the checking of the animals until they were ready for sale. Petitioners' representative stated that feed yards were located all over the Southwest and West, including California, Nevada, Louisiana, Texas and Oklahoma. Van Alstyne, Noel & Co. provided the collateral on loans made to Mawdsley, Sellas & Co. Van Alstyne, Noel & Co. was not a member partner in Mawdsley, Sellas & Co., nor did it carry said firm on its books as an investment.

Petitioner Walter A. Keve and the other partners of Van Alstyne, Noel & Co. became joint venturers with Nyvatex, a joint venture involved in oil and gas exploration. The joint venture had no place of business in New York State during 1969 and 1970. The partners of Van Alstyne, Noel & Co. and their wives owned a large amount of stock in Nyvatex Oil Co., a public company listed in over-the-counter stocks. The explorations took place in the State of Montana and various other places, but not in New York State. In order to drill for oil, Nyvatex would seek out financing in the Wall Street financial community of New York City, excluding Van Alstyne, Noel & Co., and

also from other companies. The partners of Van Alstyne, Noel & Co. became joint venturers as individuals and not as partners. Petitioners contended that Nyvatex also was engaged in a number of financial ventures in New York City, but submitted no evidence to support their contention.

6. Petitioners filed Forms IT-115, "Notice of Change in Taxable Income by United States Treasury Department Pursuant to Section 659 of the New York State Tax Law", for 1966 and 1967.

7. The 1966 and 1967 field audit adjustments to New York taxable income were based on Federal adjustments, and petitioner Walter A. Keve's share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Company.

The adjustments for 1968 were based on the disallowance of petitioner Walter A. Keve's share of partnership loss from Mawdsley, Sellas & Co. (a Missouri partnership), a capital gain adjustment, and his share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co.

The field adjustments for 1969 through 1970 were based on the disallowance of petitioner Walter A. Keve's share of partnership income/loss from Mawdsley, Sellas & Co. (a Missouri partnership), a capital loss carryover from non-New York sources, losses from oil lease joint ventures, adjustments to sale of gas and oil properties and oil and gas revenues, and his share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co.

CONCLUSIONS OF LAW

A. That the Audit Division is hereby directed to recompute petitioner Walter A. Keve's proportionate share of partnership income from Van Alstyne,

Noel & Co. in a manner consistent with the State Tax Commission decision in the Matter of the Petition of Van Alstyne, Noel & Co., signed on this date.

B. That the New York City unincorporated business tax is an income tax for which deduction shall be allowed under section 706(4) of Article 23 of the Tax Law, which refers to the computation of New York State unincorporated business income tax. For purposes of personal income tax, Article 22 is applicable, which article requires a modification increasing total income by adding back income taxes imposed by this or any other state or taxing jurisdiction; therefore, New York City unincorporated business tax was not deductible in computing New York State adjusted gross income under section 632(a)(2) of the Tax Law.

C. That although financial arrangements were made on behalf of Mawdsley, Sellas & Co., at the offices of Van Alstyne, Noel & Co. in New York City, such location did not constitute a place of business of the Missouri partnership; that even though the interests of the partners in Mawdsley, Sellas & Co. were in the same percentages as their proportionate interests in Van Alstyne, Noel & Co., the Missouri partnership did not maintain in this State a place of business where its business affairs were systemically and regularly carried on. Therefore, petitioner Walter A. Keve's share of partnership loss from Mawdsley, Sellas & Co. is not includable in determining New York adjusted gross income under section 637(a)(1) of the Tax Law and 20 NYCRR 134.1.

D. That petitioners are not entitled to deduct losses from oil lease joint ventures, since said losses were incurred as a result of oil drilling operations, which were carried on outside New York State, and which were individually financed by petitioner Walter A. Keve.

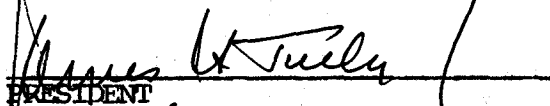
E. That petitioners are not entitled to a capital loss carryover for 1969 and 1970 since the losses were not derived from or connected with New York State sources within the meaning and intent of section 632(b)(2) of the Tax Law and 20 NYCRR 131.5.

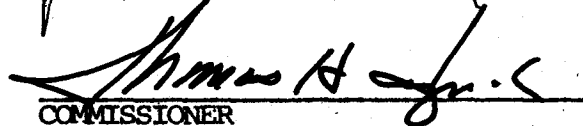
F. That the Audit Division is hereby directed to modify the Notice of Deficiency issued on November 26, 1973 to the extent shown in Conclusion of Law "A", supra; and that, except as so granted, the petition is in all other respects denied.

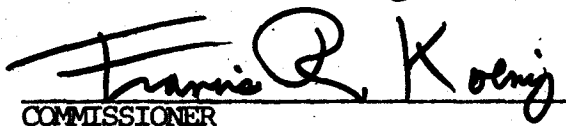
DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER