

ARTHUR LANGER CPA

January 18, 2016

Ms. Suet Sze, Tax Auditor
Income/Franchise Field Audit Bureau
80-02 Kew Gardens Road 9th Floor
Kew Gardens, NY 11415

Re: Claude Simon
Information Document Request
Audit Year 2011-2013 (Case ID# X482855259)

Ms. Sze,

Listed below is our request for details and questions to your proposed audit adjustments:

1. We would like to discuss the penalties and interest amounts. The \$176,000 amount between the two of them represents about 50% of the additional tax assessment. The penalties are onerous and the interest has been compounded by NYS's insistence of the lengthy inquiry of NYC residence.
2. The disallowance of \$1.1MM VRTX accumulated loss due to lack of basis. We have found cancelled checks and continue to look for the balance of loans made to VRTX on behalf of Mr. Simon and his affiliated companies. Our contention is that all monies loaned to VRTX were generated by Mr. Simon, either directly or indirectly.
3. The basis reductions down to \$1,389,827 from \$1,500,000-please explain the basis for this reduction.
4. The \$136,000 disallowance on Schedule E for amounts paid for rent-we disagree with this reduction as mentioned in our audit meetings.

Please review and get back to us as soon as possible..

Regards,


Arthur Langer CPA/POA

18 Blanche Street • Plainview, NY 11803
T. 516.702.3002 F. 516.932.0925
arthur@cpalanger.com



**New York State Department of
Taxation and Finance**

www.tax.ny.gov

Income/Franchise Tax Field Audit Bureau

Queens District Office

80-02 Kew Gardens Road, 9th Floor, Kew Gardens, NY 11415

Phone: (718)459-5386 Fax: (518)435-8567

January 08, 2016

Mr. Arthur Langer
18 Blanche Street
Plainview, NY 11803

RE: Simon -Claude A
Article(s): 22,30,30A
Audit Period: 01/01/2011 - 12/31/2013
Case ID: X482855259

Dear Mr. Langer:

An audit of the New York State tax returns for the tax period and article(s) noted above has resulted in an increase to the tax liability in the amount of \$529,140. The enclosed schedules reflect the details of the proposed audit adjustments.

You may accept the changes to the tax liability by returning two signed copies of the enclosed Form AU-251, *Consent to Field Audit Adjustment*.

To make payment:

- Use your Online Services account and pay online by choosing Pay an Open Audit Case from the Make a Payment section. If you do not have an online services account with NY State, you can easily set one up at www.tax.ny.gov. (Please note that non-U.S. taxpayers must have a U.S. bank account to make an electronic payment through an Online Services account.)
- If you prefer to write a check, make it payable to the Commissioner of Tax and Finance and mail it to the above address.

If you disagree with the findings and would like the opportunity to discuss them in greater detail, please contact the auditor by 01/29/2016. At this time, you may submit evidence to substantiate your position. If penalties have been imposed, you may request waiver of those which you believe and are able to establish that reasonable cause exists for abatement.

Not responding to this letter will result in the issuance of a statutory notice of deficiency. This deficiency will become a statutory assessment unless a request for a conciliation conference or a petition for a Tax Appeals hearing is filed within 90 days. In such an event, interest will accrue on the deficiency to the date of payment. If an attorney or agent represents you, a formal power of attorney must be on file. Enclosed is Publication 130, *The New York State Tax Audit – Your Rights and Responsibilities*, which explains the protest procedures.

Pursuant to Section 684(a) of Article 22, 30, 30A, interest has been computed to 01/29/2016. If payment is made by this date, no further charges to interest will be made. A response indicating your agreement or disagreement is requested by 01/29/2016. Please direct all return correspondence to Suet Sze at the address shown above. Your prompt cooperation would be greatly appreciated.

Sincerely,


Dhayalan Resavulu
Income/Franchise Tax Auditor II
(718)459-6098

Enclosure(s): Publication 130
Form AU-251

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Consent to Field Audit Adjustment

Simon -Claude A
71 Tonjes Road
Callicoon, NY 12723-5729

Date 01/08/2016
Payment Due Date 01/29/2016
SSN XXX-XX-1158

Tax Article(s) 22, 30, 30A
Audit ID X482855259
Auditor Suet Sze

Summary of Taxes

| Period End | Jurisdiction | Additional Tax (Tax Reduction) | Penalties | Interest | Total |
|------------|----------------|-----------------------------------|-----------------|-------------------|------------------|
| 12/31/2011 | New York State | \$0 | \$0 | \$0 | \$0 |
| 12/31/2012 | New York State | \$352,962 | \$94,066 | \$82,112 | \$529,140 |
| 12/31/2013 | New York State | \$0 | \$0 | \$0 | \$0 |
| | Total | \$352,962 | \$94,066 | \$82,112 | \$529,140 |
| | | | | Total | \$529,140 |
| | | | | Payments | \$0 |
| | | | | Amount Due | \$529,140 |

I agree with the amount due and pursuant to Section 681(f) of the Tax Law, waive the restrictions provided in Section 681(c) of the Tax Law, and consent to the assessment and collection of the amount due. Further, I understand that the signing of this consent does not preclude the State from issuing additional billing notices should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitations for refund, assessment, or collection of tax. I understand that these field audit adjustments are subject to review.

SIGN HERE → _____ Signature of Taxpayer or Authorized Representative with a Power of Attorney on file Date

Make your check or money order payable to the COMMISSIONER OF TAXATION AND FINANCE. Include your AUDIT ID number as shown above on your payment.



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Detail for Tax Year Ending 12/31/2011

Filing Status Married Filing Separately on Separate Forms
Resident Status State Nonresident, Only

Adjusted Gross Income

| | Federal Amount | NYS Amount |
|---|-------------------|-------------------|
| Federal Adjusted Gross Income Per Return..... | (\$103,802) | (\$112,381) |
| <i>Disallowed the flow through losses</i> | \$15,208 | \$15,208 |
| Federal Adjusted Gross Income Per Audit..... | (\$88,594) | (\$97,173) |
| NYS Additions per Return..... | \$353 | \$353 |
| NYS Subtractions per Return..... | (\$1,349) | (\$1,349) |
| Net NYS Adjustments per Audit..... | (\$996) | (\$996) |
| Federal Adjusted Gross Income Per Audit | (\$88,594) | (\$97,173) |
| Net NYS Adjustments per Audit | (\$996) | (\$996) |
| Corrected Adjusted Gross Income | (\$89,590) | (\$98,169) |

Allocation Percentage

| | |
|--|----------------|
| Allocation Percentage per Return | 108.19% |
| Federal Amount of Corrected AGI per Audit..... | (\$89,590) |
| State Amount of Corrected AGI per Audit | (\$98,169) |
| Allocation Percentage per Audit..... | 109.58% |

Itemized Deductions

| | |
|---|-----------------|
| Itemized Deductions per Return..... | \$13,706 |
| Increases to Itemized Deductions | \$0 |
| Decreases to Itemized Deductions..... | \$0 |
| Itemized Deductions per Audit..... | \$13,706 |

New York State Tax Due

| | |
|---|-----------------------|
| Base Adjusted Gross Income..... | (\$89,590) |
| Itemized Deductions per Audit | \$13,706 |
| Dependent Exemptions..... | 2 x \$1,000 = \$2,000 |
| New York State Base Net Taxable Income | \$0 |
| Tax Due on New York State Base Net Taxable Income | \$0 |
| Allocation Percentage per Audit..... | 109.58% |

New York State Income Tax Due..... \$0

| | |
|---|------------|
| Nonrefundable credits..... | (\$120) |
| <i>New York State Household Credit</i> | (\$120) |
| Other Taxes..... | \$0 |
| Total New York State Tax Due per Audit | \$0 |



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Payments

| | |
|------------------------------------|------------|
| Withholding | \$1,742 |
| Refundable Credits | \$0 |
| Estimated Payments | \$0 |
| Late Payments | \$0 |
| Less Overpayments per Return | (\$1,742) |
| Total Payments Net..... | \$0 |

Additional Tax Due

| | |
|---|------------|
| New York State Tax Due per Return..... | \$0 |
| New York State Tax Due per Audit | \$0 |
| Total Payments Net | \$0 |
| Additional New York State Tax Due..... | \$0 |

Remarks

Based on the available information, taxpayer was found to have disallowance of Schedule E loss from 160 Madison Avenue Owners Corp. in the audit year of 2011.

New York State Penalties

| |
|--|
| <i>No penalties imposed from New York State for this tax year.</i> |
|--|

New York State Interest

| |
|---|
| <i>No interest imposed from New York State for this tax year.</i> |
|---|



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Detail for Tax Year Ending 12/31/2012

Filing Status Married Filing Separately on Separate Forms
Resident Status State Resident, Only

Adjusted Gross Income

| | |
|---|--------------------|
| Federal Adjusted Gross Income Per Return..... | \$3,923,597 |
| NYS Additions per Return..... | \$1,000 |
| NYS Subtractions per Return..... | (\$194) |
| NYS Adjusted Gross Income per Return..... | \$3,924,403 |
| Net NY Adjustments per Audit | \$4,004,662 |
| <i>Schedule D capital gain adjustment</i> | \$2,747,155 |
| <i>Schedule E rental income adjustment</i> | \$126,580 |
| <i>Disallowered carried forward NOL.....</i> | \$15,208 |
| <i>Disallowered Schedule D Capital loss from VRTX Inc.</i> | \$1,115,719 |
| NYS Adjusted Gross Income Per Audit..... | \$7,929,065 |

New York State Taxable Income

| | |
|--|-----------------------|
| NYS Adjusted Gross Income Per Audit..... | \$7,929,065 |
| Standard Deduction per Audit..... | \$7,500 |
| Dependent Exemptions..... | 2 x \$1,000 = \$2,000 |
| New York State Taxable Income | \$7,919,565 |

New York State Tax

| | |
|--|------------------|
| New York State Income Tax Due per Audit..... | \$698,506 |
| Nonrefundable credits..... | \$0 |
| Other Taxes..... | \$0 |
| Total New York State Tax Due per Audit..... | \$698,506 |

Payments

| | |
|---|------------------|
| Withholding | \$1,636 |
| Refundable Credits | \$0 |
| Estimated Payments | \$251,742 |
| Late Payments..... | \$118,738 |
| Failure to pay Estimated Tax Penalty..... | (\$26,572) |
| Total Payments Net..... | \$345,544 |

Additional Tax Due

| | |
|---|------------------|
| New York State Tax Due per Return..... | \$345,294 |
| New York State Tax Due per Audit | \$698,506 |
| Total Payments Net | (\$345,544) |
| Additional New York State Tax Due..... | \$352,962 |



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Remarks

Based on available information, taxpayer was found to have following adjustments for the audit year of 2012 :-

- 1.) Additional capital gain by disallowing the expenses claimed for the sale of commercial building;
- 2.) Disallowance of part of capital losses passing through from VRTX Inc.;
- 3.) Additional rental income received for the rental property;
- 4.) Disallowance of some expenses claimed in Schedule E as rental expenses.

New York State Penalties

| | |
|---|-----------------|
| Negligence 685(b)(1) | \$17,660 |
| <i>Penalty is for negligence or intentional disregard of the tax law at the rate of 5% of the deficiency of tax.</i> | |
| Negligence 685(b)(2) | \$41,085 |
| <i>Penalty is added to B(1) to arrive at the total negligence penalty. Rate is 50% of the interest.</i> | |
| Substantial understatement of liability 685(p) | \$35,321 |
| <i>A liability is substantially understated if it exceeds the greater of: (1) 10% of correct tax due or (2) \$2000.</i> | |
| <i>Penalty rate is 10% of the additional tax due.</i> | |
| Total NYS Penalties | \$94,066 |

New York State Interest

| | |
|--|-----------------|
| On \$352,962 from 04/15/2013 to 01/29/2016 | \$82,112 |
| Total Interest | \$82,112 |


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Detail for Tax Year Ending 12/31/2013

Filing Status Married Filing Separately on Separate Forms
Resident Status State Resident, Only

Adjusted Gross Income

| | |
|---|-----------------|
| Federal Adjusted Gross Income Per Return..... | \$96,479 |
| NYS Additions per Return..... | \$1,000 |
| NYS Subtractions per Return..... | (\$2) |
| NYS Adjusted Gross Income per Return..... | \$97,477 |
| Net NY Adjustments per Audit | \$0 |
| NYS Adjusted Gross Income Per Audit..... | \$97,477 |

Itemized Deductions

| | |
|---|------------------|
| Itemized Deductions per Return..... | \$103,920 |
| Increases to Itemized Deductions | \$0 |
| Decreases to Itemized Deductions..... | \$0 |
| Itemized Deductions per Audit..... | \$103,920 |

New York State Taxable Income

| | |
|--|-----------------------|
| NYS Adjusted Gross Income Per Audit..... | \$97,477 |
| Itemized Deductions per Audit | \$103,920 |
| Dependent Exemptions..... | 2 x \$1,000 = \$2,000 |
| New York State Taxable Income | \$0 |

New York State Tax

| | |
|--|------------|
| New York State Income Tax Due per Audit..... | \$0 |
| Nonrefundable credits..... | \$0 |
| Other Taxes | \$0 |
| Total New York State Tax Due per Audit..... | \$0 |

Payments

| | |
|--------------------------------|------------|
| Withholding..... | \$0 |
| Refundable Credits | \$0 |
| Estimated Payments..... | \$0 |
| Late Payments..... | \$0 |
| Total Payments Net..... | \$0 |

Additional Tax Due

| | |
|---|------------|
| New York State Tax Due per Return..... | \$0 |
| New York State Tax Due per Audit | \$0 |
| Total Payments Net | \$0 |
| Additional New York State Tax Due..... | \$0 |

Remarks

Return accepted as filed.



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New York State Penalties

No penalties imposed from New York State for this tax year.

New York State Interest

No interest imposed from New York State for this tax year.

Claude Simon
W 183955259

2012

Schedule D Adjustment #1

| | | | | |
|---|-------------------|---------------------|------------------------------|--|
| Claude Simon | | | | |
| X-482855259 | | | | |
| 2012 | | | | |
| Schedule E Adjustment | | | | |
| | | Per 11/03/15 | Per 12/14/15 | |
| Rents | \$125,420 | \$136,000 | \$252,000 | |
| Expenses | | | | |
| Auto | \$3,008 | \$3,008 | \$3,008 | |
| Cleaning | \$3,422 | \$3,422 | \$3,422 | |
| Commission | \$5,479 | \$5,479 | \$5,479 | |
| Insurance | \$6,664 | \$6,664 | \$6,664 | |
| Legal Fee | \$30,636 | \$0 | \$30,636 | |
| Management fee | \$10,894 | \$10,894 | \$10,894 | |
| Mortgage Interest | \$48,522 | \$0 | \$48,522 | |
| Repair | \$10,070 | \$10,070 | \$10,070 | |
| Taxes | \$76,253 | \$0 | \$76,253 | |
| Utility | \$3,508 | \$3,508 | \$3,508 | |
| Other | \$20,623 | \$20,623 | \$20,623 | |
| Bank Fee | \$70,280 | \$0 | \$70,280 | |
| Fuel | \$13,729 | \$6,729 | \$13,729 | |
| | \$303,088 | \$70,397 | \$303,088 | |
| Gain/Loss | -\$177,668 | \$65,603 | -\$51,088 | |
| Difference for additional income need to be reported | | -\$126,580 | Need to be added back | |