

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JACK J. DREYFUS, JR.

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1972.

Petitioner, Jack J. Dreyfus, Jr., c/o Lopez, Edwards, Frank & Co., 205 West
34th Street, Suite 2505, New York, New York 10001, filed a petition for redetermi-
nation of a deficiency or for refund of personal income tax under Article 22 of
the Tax Law for the year 1972 (File No. 46495).

On January 28, 1986, petitioner advised the State Tax Commission, in
writing, that he desired to waive a hearing and to submit the case to the State
Tax Commission, with all briefs and documents to be submitted by May 24, 1986.
After due consideration of the entire file, the State Tax Commission renders
the following decision.

ISSUE

Whether petitioner's claimed net operating loss carryback was properly
disallowed by the Audit Division.

FINDINGS OF FACT

1. Jack J. Dreyfus, Jr. (hereinafter "petitioner") filed a New York State
Income Tax Resident Return for the year 1972 whereon he reported a total tax
liability of \$191,022.04, of which \$74,175.43 consisted of minimum income tax.

2. Petitioner's 1972 federal income tax return reported a taxable income
of \$85,978.86 and a total tax liability of \$179,797.69, which was comprised of
personal income tax of \$15,130.11 and minimum income tax of \$164.667.58.

3. Based on an audit of petitioner's 1972 Federal return, the Internal Revenue Service made the following adjustments:

Deductions disallowed:	
Legal fees	\$ 30,000.00
Trade and business expenses	3,985.00
Contributions	364,058.00
	<u>\$398,043.00</u>
Additional loss allowed:	
Section 1231 loss	<u>(\$853,976.00)</u>
Net Adjustment	<u><u>(\$455,933.00)</u></u>

4. As the result of the aforestated adjustments, petitioner's 1972 federal taxable income was reduced to a negative amount and his federal personal income tax was reduced from \$15,130.11 to zero.

5. In computing petitioner's revised 1972 federal minimum income tax, the Internal Revenue Service reduced his items of tax preference by a net operating loss carryback from 1975 of \$373,173.00. Said loss was not considered in the revision of petitioner's federal personal income tax for 1972 (see Finding of Fact "3", supra).

6. On August 3, 1979, petitioner filed a Claim for Credit or Refund of Personal Income Tax. In conjunction therewith, **he** filed a form IT-115 and a form IT-115.1 whereon he reported the aforestated federal audit changes for New York State personal and minimum income tax purposes, respectively.

7. Petitioner's claim for refund was in the total amount of \$144,654.00. In recomputing his New York State personal income tax refund due, petitioner claimed the net operating loss carryback of \$373,173.00, in addition to the aforestated adjustments made by the Internal Revenue Service. As was done for federal purposes, petitioner used the net operating **loss** carryback in recomputing his 1972 New York State minimum income tax refund due.

8. On October 1, 1980, the Audit Division issued a Notice of Partial Disallowance to petitioner whereon his refund claim of \$144,654.00 was allowed to the extent of \$123,442.48. In a Voucher for Income Tax Refund attached thereto the Audit Division's basis for partial disallowance of petitioner's refund claim was explained as follows:

"Refund is authorized based on the total Federal adjustment of \$455,933.00 as shown on the photocopy of Federal Form 4549.

A net operating loss deduction is computed the same for New York State tax purposes as for Federal tax purposes but the deduction cannot exceed Federal taxable income. Federal Form 4549 shows there was no taxable income, therefore, there is no allowable net operating loss deduction to be carried back from 1975 to the tax year 1972."

9. In computing petitioner's allowable refund, said net operating loss carryback was allowed for purposes of revising his New York State minimum income tax liability.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

B. That section 612(c) of the Tax Law provides for modifications decreasing federal adjusted gross income. None of the modifications permit a deduction for a net operating loss carryback. Accordingly, petitioner could only obtain such benefit if it was allowed for federal income tax purposes.

C. That petitioner's 1972 federal income tax audit changes (see Finding of Fact "3", supra) clearly do not include an adjustment for the 1975 net operating **loss** carryback for federal income tax purposes. Such carryback was allowed only for purposes of federal minimum income tax. Accordingly such

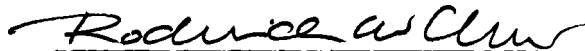
carryback cannot be allowed for New York State personal income tax purposes, but may only be allowed for New York State minimum income tax purposes.

D. That the petition of Jack J. Dreyfus is denied and the Notice of Partial Disallowance issued October 1, 1980 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1986


PRESIDENT


COMMISSIONER


COMMISSIONER