

STATE OF NEW YORK

STATE TAX COMMISSION

_____ :
 In the Matter of the Petition :
 of :
 The Dreyfus Fund, Inc. :
 for Redetermination of a Deficiency or Revision :
 of a Determination or Refund of Corporation :
 Franchise Tax under Article 9A of the Tax Law for :
 the Fiscal Year Ended 4/30/76. :
 _____ :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 30th day of September, 1985, he served the within notice of Decision by certified mail upon The Dreyfus Fund, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Dreyfus Fund, Inc.
767 Fifth Ave.
New York, NY 10153

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
30th day of September, 1985.

David Parchuck

James A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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 In the Matter of the Petition :
 of :
 The Dreyfus Fund, Inc. :
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for Redetermination of a Deficiency or Revision :
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Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Year Ended 4/30/76. :
_____ :

AFFIDAVIT OF MAILING

State of New York :
 ss. :
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 30th day of September, 1985, he served the within notice of Decision by certified mail upon Stephen L. Solomon, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen L. Solomon
Hutton & Solomon
342 Madison Ave.
New York, NY 10173

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
30th day of September, 1985.

David Parchuck

Carroll A. Angeloni
Authorized to administer oaths
pursuant to Tax Law section 174

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

September 30, 1985

The Dreyfus Fund, Inc.
767 Fifth Ave.
New York, NY 10153

Gentlemen:

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) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stephen L. Solomon
Hutton & Solomon
342 Madison Ave.
New York, NY 10173
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
THE DREYFUS SPECIAL INCOME FUND, INC. DECISION
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Year
Ended April 30, 1976.

Petitioner, The Dreyfus Special Income Fund, Inc., 767 Fifth Avenue, New York, New York 10153, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ended April 30, 1976 (File No. 42454).

Petitioner, by its duly authorized representative, Hutton and Solomon, Esqs. (Stephen L. Solomon, Esq., of counsel), waived a hearing and submitted its case for decision based upon the entire file, including a Stipulation of Facts, with all briefs to be submitted by June 21, 1985. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether, for purposes of computing petitioner's franchise tax liability under Tax Law Article 9-A, the proper starting point is Federal taxable income (I.R.C. §63) or investment company taxable income (I.R.C. §852).

FINDINGS OF FACT

1. On April 24, 1985, a Stipulation of Facts pertaining to the petition of The Dreyfus Special Income Fund, Inc. ("petitioner"), duly executed by authorized representatives for petitioner and for the Audit Division, was

submitted. This Stipulation of Facts, which includes attached exhibits in support thereof, provides as follows:

a) The Dreyfus Special Income Fund, Inc., the petitioner herein, is a corporation formed under the laws of Delaware on July 21, 1970 and reincorporated under the laws of Maryland on November 11, 1974, having its principal place of business at 767 Fifth Avenue (also known as 600 Madison Avenue), New York, New York.

b) Petitioner is on a fiscal year ending on April 30th of each year.

c) Petitioner timely filed a New York corporate franchise tax return (Form CT-3) for the taxable year ended April 30, 1976 with the New York State Department of Taxation and Finance on or before October 15, 1976. Such tax return showed a liability for New York State franchise tax for the year then ended of \$23,536.84 which has been fully paid.

d) On July 11, 1979, petitioner filed a Claim for Credit or Refund of Corporation Tax Paid (Form CT-8) with the New York State Department of Taxation and Finance for a refund of \$16,813.17 of the franchise tax paid for the year ended April 30, 1976. This claim was rejected by letter dated August 2, 1979 and petitioner filed a Petition for Hearing on July 6, 1981.

(e) By letter dated September 15, 1981, the Tax Appeals Bureau advised the petitioner that the original Petition had been accepted as a Perfected Petition. In response to the Perfected Petition, the Audit Division issued an Answer on November 13, 1981.

(f) Petitioner filed a Federal income tax return (Form 1120) for the taxable year ended April 30, 1976 with the Internal Revenue Service. The petitioner claimed a deduction for dividends paid in its Federal income

tax for the taxable year ended April 30, 1976 of \$4,138,384.24 and paid no Federal income tax for said year.

(g) Petitioner had registered under the Investment Company Act of 1940, as amended, (15 U.S.C. 80a-1 to 80b-2) as a management company and at all times during the taxable year ended April 30, 1976 it was registered under such Act.

(h) Petitioner had elected to be a regulated investment company in a Federal income tax return filed for a year prior to the year ended April 30, 1976 and accordingly, it filed its Federal income for the taxable year ended April 30, 1976 as a regulated investment company.

(i) All of petitioner's gross income as determined for Federal income tax purposes for the taxable year ended April 30, 1976, was derived from dividends, interest and gains from the sale or disposition of stock or securities.

(j) None of the petitioner's gross income as determined for Federal income tax purposes, for the taxable year ended April 30, 1976 was derived from the sale or disposition of stocks or securities held for less than three months.

(k) At the close of each quarter of the taxable year ended April 30, 1976, at least 50% of petitioner's assets consisted of cash and cash items, Government securities and securities of other regulated investment companies and other securities limited in respect of any issuer, to an amount not greater in value than 5% of petitioner's total assets and to not more than 10% of the outstanding voting securities of such issuer.

(l) At the close of each quarter during the taxable year ended April 30, 1976, not more than 25% of the value of petitioner's total assets was

invested in the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, or of two or more issuers which petitioner controls and which are engaged in the same trade or business or a related trade or business.

(m) Petitioner's deduction for dividends paid during the taxable year ended April 30, 1976 for Federal income tax purposes exceeded the sum of (i) 90% of its investment company taxable income, as determined by Section 852(b) I.R.C., before the deduction for dividends paid plus (ii) 90% of the excess of (a) its interest income excludible from gross income under Section 103(a) I.R.C. over (b) its deductions disallowed under Sections 265 and 271(a)(2).

(n) Petitioner maintained records as to the actual ownership of its capital stock as required by section 1.852-6 of the Regulations under the Internal Revenue Code of 1954.

2. Petitioner's claim for refund is premised upon the assertion that "investment company taxable income" rather than Federal taxable income is the appropriate starting point for computing petitioner's entire net income and its franchise tax liability under Article 9-A of the Tax Law. In essence, petitioner seeks, for purposes of computing franchise tax liability to New York, a deduction for dividends paid.

3. Petitioner's representative herein, Hutton and Solomon, Esqs. (Stephen L. Solomon, Esq., of counsel), is also the duly authorized representative for a number of other parties, all of whom have filed timely petitions to contest denials of refunds claimed upon the identical assertion as is raised by petitioner. Each of those parties has, by a stipulation duly executed by their authorized representative and by the Audit Division's authorized representative,

agreed to be bound by the decision rendered herein without oral hearings and issuance of separate decisions pertaining to each of such petitions. A listing of the parties included in such stipulation is attached to this decision as Appendix "A".

CONCLUSIONS OF LAW

A. That the tax imposed upon petitioner pursuant to Article 9-A of the Tax Law is based upon petitioner's entire net income (Tax Law §209). Entire net income is, in turn, total net income from all sources and is presumably the same as the entire taxable income which petitioner is required to report to the United States Treasury Department (Tax Law §208.9).

B. That section 3.11 of Ruling of State Tax Commission With Respect to the Franchise Tax on Business Corporations, promulgated on March 14, 1962, and in effect until January 1, 1976, provided:

"Definition of Entire Net Income (Law Sec. 208.9).

a. Entire net income means total net income from all sources, and is presumed to be the same as the taxable income which the taxpayer is required to report to the United States Treasury Department for purposes of the Federal income tax imposed by chapter 1 of the Internal Revenue Code * * *. However, neither the taxable income actually reported nor the taxable income actually determined for Federal income tax purposes is necessarily the same as the taxable income required to be reported for Federal income tax purposes under the provisions of the Internal Revenue Code. Ordinarily the determination of the Commissioner of Internal Revenue is followed, but it is not binding on the State Tax Commission."

b. 'Federal taxable income' is the starting point in the computation of entire net income. This means taxable income as defined in section 63 of the Internal Revenue Code, not any special type of taxable income such as 'investment company taxable income' or 'real estate investment trust taxable income'." (emphasis added).

C. That 20 NYCRR 3-2.2(b), filed August 31, 1976 and effective for all taxable years beginning on or after January 1, 1976, provided, in relevant part, as follows:

"(b) 'Federal taxable income' is the starting point in computing entire net income. 'Federal taxable income' means taxable income as defined in section 63 of the Internal Revenue Code, and does not mean 'investment company taxable income' as defined in section 852 of the Internal Revenue Code." (emphasis added).

D. That effective July 5, 1979, the Legislature amended the Tax Law by adding as subdivision 7 to section 209 (L. 1979, Ch. 500), the following:

"7. For any taxable year, beginning on or after January first, nineteen hundred eighty of a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code of nineteen hundred fifty-four, in which such company is subject to federal income taxation under section eight hundred fifty-two of such code, such company shall be subject to a tax computed under either clause one or four of paragraph (a) of subdivision one of section two hundred ten of this chapter, whichever is greater, and shall not be subject to any tax under article thirty-two of this chapter. In the case of such a company the term 'entire net income' means 'investment company taxable income' as defined in paragraph two of subdivision (b) of section eight hundred fifty-two, as modified by section eight hundred fifty-five, of the internal revenue code of nineteen hundred fifty-four plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of such code subject to the modification required by subdivision nine of section two hundred eight of this chapter, other than the modification required by clause two of paragraph (a) and by paragraph (f) thereof, including the modification required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this chapter." (emphasis added).¹

E. That, as specified by its own terms, subdivision 7 of Tax Law section 209 was made applicable to taxable years beginning on or after January 1, 1980 and was not made retroactive to taxable years beginning prior to such date. Accordingly, Federal taxable income of \$4,138,384.24, as reported by petitioner for its fiscal year ended April 30, 1976 at line 28 of Form 1120 (U.S. Corporation Income Tax Return), was the proper starting point for computing entire net income and, in turn, petitioner's New York State franchise tax liability.

1 In turn, 20 NYCRR 3-2.2(b) was amended on October 29, 1982 to comport with the above-noted legislative amendment.

F. That the petition of The Dreyfus Special Income Fund, Inc. is hereby denied and the denial of claim for refund is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 30 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

APPENDIX "A"

<u>NAME</u>	<u>TAB NUMBER</u>
Affiliated Fund, Inc.	44191/50802
Axe Houghton Fund B, Inc.	40034
Axe Houghton Income Fund, Inc.	33086
Axe Houghton Income Fund, Inc.	34352
Axe Houghton Stock Fund, Inc.	33087
Axe-Houghton Income Fund, Inc.	42779
Axe-Houghton Stock Fund, Inc.	38717
Broad Street Investing Corp.	38225
Broad Street Investing Corp.	45088
Bullock Fund Ltd.	32888
Bullock Fund, Ltd.	34353
Bullock Fund, Ltd.	43078
Carrier & General Corp.	45098
Carriers & General Corp.	34354
Carriers & General Corp.	51045
Chemical Fund, Inc.	34355
Chemical Fund, Inc.	44196
Chemical Funds, Inc.	32889
Dividend Shares, Inc.	34356
Dividend Shares, Inc.	39929
Dreyfus Liquid Assets, Inc.	42079
Dreyfus Special Income Fund	38609
Dreyfus Special Income Fund, Inc.	34120
First Investors Bond Appreciation Fund, Inc.	50645
First Investors Fund for Income, Inc.	33254
First Investors Fund For Income, Inc.	37225
First Investors Fund for Income, Inc.	41971
First Investors Fund for Income, Inc.	44197
First Investors Fund for Income, Inc.	50644
First Investors Fund, Inc.	45090
First Investors Natural Resources Fund, Inc.	50647
First Investors Option Fund, Inc.	50646
First Investors Resources Fund, Inc.	44195
Lord Abbet Income Fund, Inc.	50803
Lord Abbett Bond - Debenture Fund, Inc.	44192
Lord Abbett Income Fund, Inc.	33089
Lord Abbett Income Fund, Inc.	44193
Merrill Lynch Ready Asset Trust	44190
National Investors Corp.	45091
National Investors Corporation	38230
National Securities Fund - Bond Fund	38618
National Securities Fund - Dividend Fund	38619
National Securities Fund - Preferred Fund	30494
National Securities & Research Corp.	
National Securities Fund - Preferred Fund	38621
National Securities Fund - Stock Fund	30495
National Securities & Research Corp.	

<u>NAME</u>	<u>TAB NUMBER</u>
National Securities Fund - Stock Fund	38622
National Securities Fund - Balanced Fund	34124
National Securities Fund - Bond Fund	34125
National Securities Fund - Preferred Fund	34129
National Securities Funds - Balanced Fund	30489
National Securities & Research Corp.	
National Securities Funds - Balanced Fund	38617
National Securities Funds - Balanced Fund	44203
National Securities Funds - Balanced Fund	46155
The Bank Of New York Trustee	
National Securities Funds - Bond Fund	30490
National Securities & Research Corp.	
National Securities Funds - Bond Fund	44198
National Securities Funds - Bond Fund	46156
The Bank of New York, Trustee	
National Securities Funds - Dividend Fund	30491
National Securities & Research Corp.	
National Securities Funds - Dividend Fund	44201
National Securities Funds - Dividend Fund	46158
The Bank of New York, Trustee	
National Securities Funds - Growth Fund	30492
National Securities & Research Corp.	
National Securities Funds - Income Fund	30493
National Securities & Research Corp.	
National Securities Funds - Income Fund	38620
National Securities Funds - Income Fund	44200
National Securities Funds - Income Fund	46157
The Bank of New York, Trustee	
National Securities Funds - Preferred Fund	46154
The Bank of New York, Trustee	
National Securities Funds - Stock Fund	44202
National Securities Funds - Dividend Fund	34126
National Securities Funds - Income Fund	34127
National Securities Funds - Stock Fund	34128
Oppenheimer Income Fund of Boston, Inc.	41075
Oppenheimer Income Fund, Inc.	33091
Oppenheimer Monetary Bridge, Inc.	33092
Oppenheimer Money Market Fund, Inc.	45097
Oppenheimer Special Fund, Inc.	33093
Oppenheimer Special Fund, Inc.	45093
Surveyor Fund, Inc.	42773
The Dreyfus Fund, Inc.	44199
The Dreyfus Leverage Fund, Inc.	33293
The Dreyfus Leverage Fund, Inc.	40100
The Dreyfus Special Income Fund	30488
The Dreyfus Special Income Fund, Inc.	45976
The Lehman Corp.	33088
The Lehman Corp.	37226
The Lehman Corp.	44194

<u>NAME</u>	<u>TAB NUMBER</u>
The One William Street Fund, Inc.	33090
The One William Street Fund, Inc.	37229
The One William Street Fund, Inc.	44871
The Value Line Cash Fund, Inc.	40517
The Value Line Income Fund, Inc.	40516
The Value Line Leverage Growth Investors, Inc.	44189
Tri-Continental Corp.	45092
Tri-Continental Corporation	38606
Trinwall Bond Fund, Inc.	34358
Trinwall Bond Fund, Inc.	40518
Trinwall Cash Reserve, Inc.	35119/40250
Union Income Fund, Inc.	38231
Union Income Fund, Inc.	45089