

STATE OF NEW YORK
STATE TAX COMMISSION

*Grayck -
P.I. - 1970*

In the Matter of the Petition

of

MARCUS D. and LOUIS B GRAYCK

For a Redetermination of a Deficiency or
a Refund of Personal Income Taxes :
Taxes under Article(s) 22 of the :
Tax Law for the (Year(s) 1963, 1964 :
1965 and 1966

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

*James Smith
CH # 99-320*

State of New York
County of Albany

Claire A. Draves , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of November , 1970 , she served the within Notice of Decision (or Determination) by (certified) mail upon Marcus D. and Louis B. Grayck (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marcus D. and Louis B. Grayck
Hilldale Lane
Sands Point, New York 11050

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

20th day of November , 1970.

Janet Wright

Claire A. Draves

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MARCUS D. AND LOIS B. GRAYCK : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law from :
the Years 1963, 1964, 1965 and 1966 :
:

Taxpayers having filed a petition pursuant to Section 689 of the Tax Law for the redetermination of a deficiency of personal income tax imposed by Article 22 of the Tax Law for the years 1963, 1964, 1965 and 1966 and the file with respect to such deficiency having been submitted in lieu of a hearing and said file having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue herein is the application of Article 22 of the Tax Law to the undistributed income of a corporation taxable for Federal purposes under "Subchapter S" (Section 1371 et. seq.) of the Internal Revenue Code).
2. The deficiencies amount to \$203.59 (as revised on June 9, 1967) for 1963; \$342.77 for 1964; \$621.64 for 1965 and \$177.65 for 1966.
3. Natco Business Corporation was formed in New York on April 1956.
4. On or about November 25, 1958 Natco filed an election to be taxed as a "subchapter S" corporation. It did not thereafter pay Federal income tax.
5. Natco paid New York franchise taxes under Article 9-A of the Tax Law for all taxable years.

6. The taxpayers included the undistributed income of Natco in the sum reported on line 9 of the Federal income tax form 1040 and paid Federal income tax thereon.

7. The taxpayer, Marcus D. Grayck, computed his New York taxable income as the amount reported on line 9 of the Federal income tax form 1040 as reduced by the amount of undistributed profits included therein. The taxpayer thus did not pay tax on the amount of such undistributed profits.

Upon the foregoing findings and all the evidence in the case
The State Tax Commission hereby

DECIDES:

A. Article 22 of the New York Tax Law may properly be construed to include in the taxpayers income the "undistributed profits" of a "subchapter S" corporation. The reference in Tax Law Section 612(a) to his "federal adjusted gross income" does not exclude amounts which are also in the taxable income of the corporation. That the Legislature intended to include the "undistributed profits" is shown by Chapter 783 of the Laws of 1962 which amended Section 632(b) to define the source of such income and exclude such income from the tax base of a non-resident.

B. The inclusion of undistributed profits in the tax base of the shareholder under Article 22 of the Tax Law and also in the tax base of the corporation under Article 9-A of the Tax Law does not result in discriminatory double taxation since the undistributed profits of a business are included in the tax base of an individual under Article 22 and also in the tax base of the business itself under Article 23 of the Tax Law. The failure to exempt the corporation under Article 9-A is immaterial when such business would otherwise be subject to Article 23 (see Letter of Joseph H. Murphy, March 13, 1961; Prentice-Hall, State and Local Taxes ¶55,275.10).

C. It has been held that the taxation under Article 22 of the undistributed profits of a "subchapter S" corporation does not violate Article 16, Section 3 of the New York State Constitution (Garlin v Murphy, 51 Misc. 2d 477.)

D. The petition is denied and the deficiencies are affirmed together with such interest, if any, as may be due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York
November 18, 1970

STATE TAX COMMISSION

Isidor Galbraith

COMMISSIONER

COMMISSIONER

William Koerner

COMMISSIONER