

STATE OF NEW YORK  
STATE TAX COMMISSION

*Kandel, Allen & Ruth*  
*Personal Income*  
*(1971)*

In the Matter of the Petition

of

ALLEN & RUTH KANDEL

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1960 and 1961.

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

State of New York  
County of Albany

Linda Wilson, 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 26th day of August, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon ALLEN & RUTH KANDEL (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Allen and Ruth Kandel  
46 Schenck Avenue  
Great Neck, New York

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

26th day of August, 1971.

*Maatha Gurnard*

*Linda Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petitions :  
of :  
ALLEN KANDEL AND RUTH KANDEL : DECISION  
for Redetermination of Deficiency or for :  
Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1960 and 1961. :

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Petitioners, Allen Kandel and Ruth Kandel, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1960 and 1961. (File No. 69885704). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 15, 1971, at 2:45 P.M. Petitioner, Allen Kandel, appeared pro se and for his wife, petitioner, Ruth Kandel. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did petitioners, Allen Kandel and Ruth Kandel, file New York State personal income tax returns and pay over to the Income Tax Bureau personal income tax due for the years 1960 and 1961?

FINDINGS OF FACT

1. On March 11, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Allen Kandel and Ruth Kandel, imposing New York State personal income tax, a penalty pursuant to section 685(a) of the Tax Law, and interest for failure to file a New York State personal income tax return for the year 1961 and pay over personal income tax due for said year and accordingly issued a Notice of Deficiency in the sum of \$2,591.08.

2. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Allen Kandel and Ruth Kandel, imposing New York State personal income tax, a penalty pursuant to section 685(a) of the Tax Law, and interest for failure to file a New York State personal income tax return for the year 1960 and pay over personal income tax due for said year and accordingly issued a Notice of Deficiency in the sum of \$2,501.14.

3. Petitioners, Allen Kandel and Ruth Kandel, filed Federal income tax returns for the years 1960 and 1961. The Income Tax Bureau computed the New York State personal income tax due for said years from the figures contained in said Federal income tax returns and in the Federal audits thereof.

4. On December 11, 1963, the Income Tax Bureau sent a letter to petitioner, Allen Kandel, advising him that it had no record of the filing of a New York State income tax return for the year 1961 and requesting that he file a return or submit proof of the filing of a return or the payment of tax. He did not reply to said letter.

5. Petitioners, Allen Kandel and Ruth Kandel, failed to submit any documentary or other satisfactory evidence to substantiate their contention that they filed New York State personal income tax returns and paid over to the Income Tax Bureau personal income tax due for the years 1960 and 1961.

#### CONCLUSIONS OF LAW

A. That since petitioners, Allen Kandel and Ruth Kandel, failed to file New York State personal income tax returns and pay over personal income tax due for the years 1960 and 1961, the Income Tax Bureau was authorized to estimate their New York taxable income and tax thereon from any information in its possession and mail notices of deficiency to them for said tax in accordance with the meaning and intent of section 681(a) of the Tax Law.

B. That since petitioners, Allen Kandel and Ruth Kandel, failed to file New York State personal income tax returns for the years 1960 and 1961 and since they failed to show that such failure was due to reasonable cause, the Income Tax Bureau properly imposed a penalty equal to 25% of the amount of the tax due in accordance with the meaning and intent of section 685(a) of the Tax Law.

C. That the petitions of Allen Kandel and Ruth Kandel are denied and the notices of deficiency issued March 11, 1968, and February 10, 1969, are sustained.

DATED: Albany, New York

*August 26, 1971*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

*Kass, George & Inez*  
*Personal Income*  
*1971*

In the Matter of the Petition

of

GEORGE & INEZ M. KASS

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1960.

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

State of New York  
County of Albany

Linda Wilson, 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 15th day of March, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon GEORGE & INEZ M. KASS (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: George & Inez M. Kass  
96 N. Drive  
Buffalo, New York 14216  
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

15th day of March, 1971.

*Janet J. Lunn*

*Linda Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE & INEZ M. KASS

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1960.

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

State of New York  
County of Albany

Linda Wilson, 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 15th day of March, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon CHARLES W.

MAYO (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Charles W. Mayo  
c/o Ernst & Ernst  
901 Western Building  
Buffalo, New York 14202  
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

15th day of March, 1971.

Martha Tuzare

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE & INEZ M. KASS	:	
	:	
For a Redetermination of a Deficiency	:	DECISION
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the year 1960.	:	

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George and Inez Kass petitioned for a refund of Personal Income Taxes for the year 1960 under Article 22 of the Tax Law. A formal hearing was held at the State Office Building, Buffalo, New York, before L. Robert Leisner, Hearing Officer.

The petitioners were represented by Charles W. Mayo, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioners filed a claim for refund in the amount of \$2,185.22 for the year 1960.

2. The claim for refund was denied under file No. 805848 on January 11, 1965 and the taxpayers timely petitioned for a formal hearing.

3. The taxpayers' petition was based on the fact that one of the taxpayers was a stockholder in International Car Leasing Co. which was liquidated in 1960. Taxpayers originally reported capital gain of \$401,391.42 in 1960. Upon an audit and a deficiency assessment against the corporation, there was asserted a transferee liability or assessment against the petitioners, in the amount of \$43,915.66 which was paid on December 16, 1963 and there was a resultant taxpayers' share of New York franchise tax of \$4,644.93 which was paid on March 4, 1964.

4. The questions are: 1) whether these payments were allocable or applicable to the 1960 transaction, or to be deducted in the years 1963 and 1964, 2) whether New York State affords tax treatment similar to the optional credit provided by section 1341 of the Internal Revenue Code.

5. The taxpayers asserted that they should be permitted to decrease the capital gain income they received from the liquidation in 1960, or receive some type of treatment similar to the tax credit provided by section 1341 of the Internal Revenue Code. The Income Tax Bureau contended that: 1) the deduction was applicable to the year of repayment under Federal conformity and the "claim of right doctrine," 2) there is no state tax credit similar to section 1341 of the Internal Revenue Code allowing an elective tax credit based on the earlier years tax computation, 3) the year 1963 was closed and barred by the statute of limitations.

#### CONCLUSIONS OF LAW

A. The funds were received in 1960 under "claim of right." The deduction of monies repaid is deductible only in the year of repayment. *United States v Lewis*, 340 U.S. 590, *Healey v Commissioner*, 345 U.S. 278. A prior capital gain on a liquidating dividend requires capital gain treatment on assertion of transferee liability and repayment of funds held under claim of right. *F. D. Arrowsmith v Commissioner*, 344 U.S. 6, *Skelly Oil Co. v United States*, 394 U.S. 678.

B. Adjustment of the taxpayers 1960 return cannot be permitted because the computation of federal tax under section 1341(a)(5) did not as a matter of law, change the amount of the taxpayer's federal adjusted gross income or itemized deduction for the year 1960.

C. The New York State Tax Law does not have an optional credit such as that provided by section 1341 of the Internal Revenue Code.

D. Under the New York Tax Law applying Federal conformity the taxpayers received regular allowances of long term capital



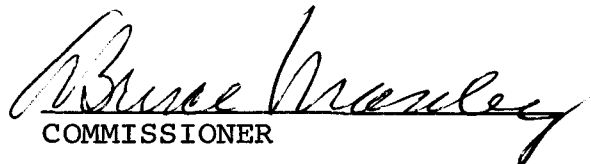
losses for 1963 and 1964 offset against the capital gains shown on their returns for those years subject to the regular federal rules regarding limitations on net capital losses. The taxpayers received the maximum benefits permitted under the Tax Law.


E. The denial of the refund under file No. 805848 is in all respects sustained.

DATED: Albany, New York  
*March 15, 1971.*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER