

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY B. & MILDRED S. TUNICK

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) 1965

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

State of New York  
County of Albany

Martha Funaro , 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 9th day of May , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon Stanley B. & Mildred S. Tunick (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Stanley B. & Mildred S. Tunick  
252 DeMott Avenue  
Rockville Centre, New York 11570  
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

9th day of May , 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**May 9, 1972**

**Stanley B. & Mildred S. Tunick**  
**252 DeMott Avenue**  
**Rockville Centre, New York 11570**

**Dear Mr. & Mrs. Tunick:**

Please take notice of the **DECISION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)  
**690** of the Tax Law any proceeding  
in court to review an adverse decision must be commenced  
within **4 Months** after the date of this notice.

Any inquiries concerning the computation of tax due or  
refund allowed in accordance with this decision or  
concerning any other matter relating hereto may be  
addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**Nigel G. Wright**  
Hearing Officer

cc Petitioner's Representative  
Law Bureau

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
STANLEY B. & MILDRED S. TUNICK :  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for the :  
Year 1965. :

A hearing was held on October 13, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner appeared in person. The Income Tax Bureau was represented by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

The issue in this case is whether petitioners may compute their New York adjusted gross income by modifying their federal adjusted gross income by reason of the sale of property on which accelerated depreciation had been taken prior to 1960 for federal purposes but not for New York purposes and which has been sold without a gain for federal purposes.

FINDINGS OF FACT

1. Petitioners were participants in real estate syndicates which owned the Hotel Astor and the Hotel Manhattan. They had acquired their interests in 1956 and 1958. Both syndicates used accelerated depreciation for the purposes of the federal income tax and their own bookkeeping. In 1965, petitioners sold their interests for book value sustaining no gain or loss for federal tax purposes.

2. For New York income tax purposes accelerated depreciation was neither taken nor allowable prior to January 1, 1960. Hence, on December 31, 1959, the adjusted basis of petitioners' property was higher for New York purposes than for federal purposes.

3. The amount of the refund claimed is \$133.90.

CONCLUSIONS OF LAW

The asserted modification cannot be made. While it may appear that petitioners suffered a loss which should be allowed, section 612(c) of the Tax Law, providing for subtracting from federal adjusted gross income, does not cover the situation herein. Section 612(c)(4) applies only where and to the extent that there is a gain included in federal adjusted gross income. There being no gain here, no adjustment can be made. (See Regulation 20 NYCRR 116.3(d)(6).)

DECISION

The petition is denied. The claim for refund is denied.

DATED: Albany, New York

*May 9, 1972*

STATE TAX COMMISSION

COMMISSIONER

*Bruce Hawley*  
COMMISSIONER

*Milton Koenig*  
COMMISSIONER