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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARMEN O. PEDERSEN

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) 1970

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 8th day of March, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Carmen O. Pedersen

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Carmen O. Pedersen

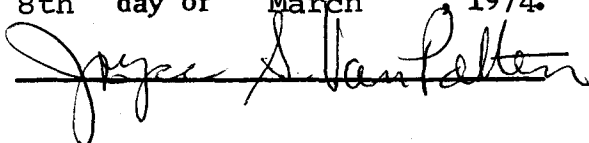
99 Forest Drive
Orchard Park, New York 14127

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

8th day of March 1974.





STATE OF NEW YORK
STATE TAX COMMISSION

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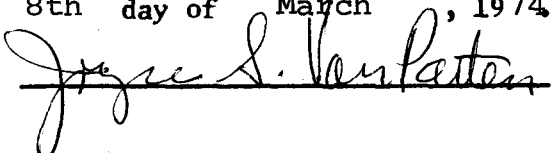
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 8th day of March , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Gilbert J.
Pedersen (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Gilbert J. Pedersen
2100 Main Place Tower
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

8th day of March , 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION
Mario A. Procaccino,
~~MEMBER EX OFFICIO~~, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 8, 1974

Mr. Carmen O. Pedersen
99 Forest Drive
Orchard Park, New York 14127

Dear Mr. Pedersen:

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

Please take further notice that pursuant to **section 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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

EDWARD ROOK,
~~HEARING OFFICER~~
Secretary, State Tax
Commission

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CARMEN O. PEDERSEN	:	DECISION
	:	
for Redetermination of a Deficiency	:	
or for Refund of Personal Income	:	
Tax under Article 22 of the Tax Law	:	
for the Year 1970.	:	
	:	
	:	

Petitioner, Carmen O. Pedersen petitioned for a redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the year 1970.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on February 8, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Gilbert J. Pedersen and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Where a husband and wife filed separate New York State returns on a combined income tax form in 1970 and the wife is subject to New York minimum income tax may the Income Tax Bureau allocate itemized deductions in a manner other than as elected by the husband and wife.

FINDINGS OF FACT

1. Petitioner, Carmen O. Pedersen, timely filed New York State income tax returns for the year 1970.

2. A Notice of Determination of deficiencies in personal income taxes for the year 1970, was issued on May 22, 1972, against the taxpayers under File No. 0-58568687.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. The taxpayers, Gilbert J. Pedersen and Carmen O. Pedersen, elected to file a joint Federal return and separate New York State returns on a combined Income Tax Return and to allocate itemized deductions between them.

5. The wife, Carmen O. Pedersen, was subject to minimum income tax on the item of tax preference involving a substantial capital gain.

6. In computing and asserting the minimum income tax on the item of tax preference, the Income Tax Bureau took all of the itemized deductions and attributed them to the wife and then endeavored to use its own allocation of itemized deductions to compute New York taxable income and to compute the minimum tax on tax preference income. It then decreased to itemized deduction from ordinary taxable income and asserted an increased New York personal income tax as well as the minimum income tax against the wife.

7. The taxpayers then asserted that they could take the itemized deductions between them as they elected and filed an amended return where the husband, Gilbert J. Pedersen, claimed all of the itemized deductions.

8. The taxpayers conceded at the hearing, that the minimum income tax is applicable to the wife's untaxed capital gain less the specific deduction and less regular New York income tax. The taxpayers elected for the husband to take all itemized deductions.

CONCLUSIONS OF LAW

A. Under section 611(b)(2)(B) of the Tax Law separate taxes are to be determined on the separate New York taxable incomes of spouses if they so elected.

B. Under section 612(f), New York adjusted gross incomes are to be separately determined where the New York income taxes are to be separately determined.

C. Under section 615(b)(2), where the New York taxable incomes are separately determined New York itemized deductions may be taken by either spouse or divided between them as they may elect.

D. There is no provision under section 623 or any other section to authorize the Income Tax Bureau to change the division of the itemized New York deductions which the spouses elect. These itemized New York deductions may be taken by either spouse or divided between them as they may elect under section 615(b)(2). To that extent, the petition of Carmen O. Pedersen is sustained and the deficiencies are redetermined.

E. The taxpayer, Carmen O. Pedersen's minimum income tax on the item of tax preference per the amended return is redetermined to be increased to \$2,946.74.

F. The taxpayer, Carmen O. Pedersen's New York personal income tax on taxable income based on the amended return with no itemized deductions taken, is redetermined to be increased to \$24,571.50.

G. All of the itemized deductions in the amount of \$12,551.28 were properly taken by Gilbert J. Pedersen, the husband, per his separate New York tax return on IT-208 and his personal income tax is accordingly reduced.

DATED: Albany, New York
March 8, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER