

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL BAUM

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(*)~~ 22 of the
Tax Law for the Year ~~(*)~~ 1970

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

State of New York
County of Albany

JANET MACK

, 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 14th day of March , 1975 , she served the within
Notice of Decision ~~(XXXXXXXXXXXX)~~ by (certified) mail upon Samuel Baum

~~(XXXXXXXXXXXX)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Samuel Baum
3332 Wilson Avenue
Bronx, New York 10469

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 ~~(XXXXXXXXXX)~~
~~(X)~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(XXXXXXXXXX)~~ petitioner.

Sworn to before me this

14th day of March , 1975.

Patricia A. Mauley

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Saul Heckelman, Acting President
~~XXXXXXXXXXXXXXXXXXXX~~

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
March 14, 1975

Mr. Samuel Baum
3332 Wilson Avenue
Bronx, New York 10469

Dear Mr. Baum:

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 deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Paul B. Coburn
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SAMUEL BAUM : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1970. :

Petitioner, Samuel Baum, residing at 3332 Wilson Avenue, Bronx, New York 10469, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 0-55142304). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 19, 1974, at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

ISSUE

Are the minimum income tax provisions of Article 22 of the Tax Law unconstitutional as applied to the remainder of long term capital gain, not subject to New York personal income tax, and investment interest expense, reported by petitioner, Samuel Baum, for the year 1970?

FINDINGS OF FACT

1. Petitioner, Samuel Baum, filed a New York State income tax resident return for the year 1970. He stated on said return that there was tax due in the sum of \$293.38, that there was tax withheld in the sum of \$881.00 and that there was a refund due to him in the sum of \$587.62.

2. On October 26, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Samuel Baum, which recomputed his income tax liability for the year 1970 upon the grounds that the remainder of long term capital gain, not subject to New York personal income tax, and investment interest expense are considered items of tax preference and subject to New York minimum income tax. His tax liability was recomputed as follows:

Investment interest expense		\$44,094.57
Investment income:		
Dividends	\$16,370.27	
Interest income	1,307.74	
Short term capital gain	<u>50.34</u>	
Net investment income		<u>17,728.35</u>
Excess investment interest expense		\$26,366.22
Capital gain		<u>18,711.61</u>
Total items of tax preference		\$45,077.83

Modification for Allocable Expenses Attributable to Items
of Tax Preference

Allocable Expenses

Taxes	\$ 946.52
Contributions	531.00
Interest expense	<u>44,094.57</u>
Total	\$45,572.09
Less: State income taxes	<u>881.00</u>
Net	\$44,691.09

Total allocable expenses	\$44,691.09
New York adjusted gross income	54,795.61
Items of tax preference	45,077.83
Specific deduction	20,000.00

Total allocable expenses	\$44,691.09
\$54,795.61	X \$44,691.09 = <u>30,658.09</u>
<u>\$54,795.61 + \$45,077.83 - \$20,000.00</u>	
Modification under Section 615(c) (4)	\$14,033.00

Total New York income	\$54,795.61
Deductions - Line 6(c), Page 1	\$46,405.93
Less: Modification - Section 615(c) (4)	\$14,033.00
State income taxes	<u>881.00</u> <u>14,914.00</u>
New York itemized deductions	<u>31,491.93</u>
Balance	\$23,303.68
Exemption	<u>625.00</u>
New York taxable income	\$22,678.68
Tax on income	\$ 1,738.23
Statutory credit	<u>12.50</u>
New York personal income tax	\$ 1,725.73

Items of Tax Preference	\$45,077.83
Less: Specific deduction	<u>20,000.00</u>
Balance	\$25,077.83
Less: New York personal income tax	<u>1,725.73</u>
Minimum taxable income	\$23,352.10

Minimum income tax due at 3%	700.56
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New York personal income tax	\$1,725.73
New York tax withheld	<u>881.00</u>
Net New York personal income tax	\$ 844.73
New York minimum income tax	<u>700.56</u>

TOTAL NEW YORK TAX DUE	\$1,545.29
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In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the sum of \$1,594.43.

3. Petitioner, Samuel Baum, stipulated at the formal hearing that the only issue that he was contesting was the constitutionality of the provisions of Article 22 of the Tax Law which imposed a minimum income tax upon his income for the year 1970. He further stipulated that he was not contesting the Income Tax Bureau's computation of the additional personal income tax or minimum income tax due as set forth in the Statement of Audit Changes.

CONCLUSIONS OF LAW

A. That the constitutionality of the laws of the State of New York are presumed at the administration level of the New York


State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that sections 622 and 623 of the Tax Law relating to the imposition of a minimum income tax on resident individuals such as petitioner, Samuel Baum, are constitutional.

B. That the petition of Samuel Baum is denied and the Notice of Deficiency issued October 26, 1971, is sustained.

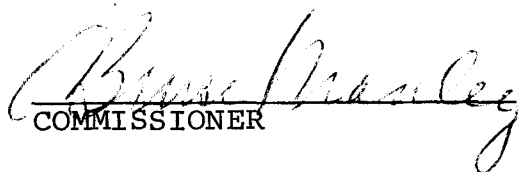
DATED: Albany, New York

STATE TAX COMMISSION

March 14, 1975



PRESIDENT



COMMISSIONER



COMMISSIONER