

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

DON B. ALLEN and SHERRY D. ALLEN
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (X) 22 of the
Tax Law for the Year (~~XXXXXX~~) 1970.:

State of New York
County of Albany

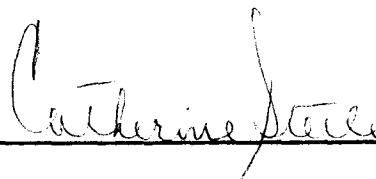
Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Don B. Allen and Sherry D. Allen (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Don B. Allen
136 Knickerbocker Road
Pittsford, New York 14534
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative~~ ~~XXXXXX~~ 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

13th day of September, 1976.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DON B. ALLEN and SHERRY D. ALLEN
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(ss)~~ 22 of the
Tax Law for the Year ~~(s)xxxPeriod(s)~~ 1970.:

AFFIDAVIT OF MAILING

State of New York
County of Albany

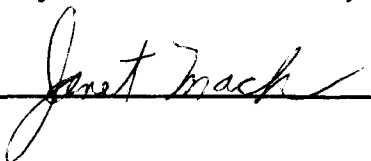
Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Sterling Weaver, Esq.

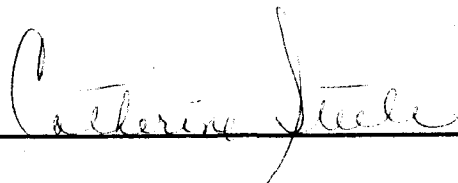
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sterling Weaver, Esq.
Nixon, Hargrave, Devans & Doyle
1 Exchange Street
Rochester, New York 14603
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of September, 1976







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 13, 1976

TELEPHONE: (518) 457-3850

Mr. & Mrs. Don B. Allen
136 Knickerbocker Road
Pittsford, New York 14534

Dear Mr. & Mrs. Allen:

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

Please take further notice that pursuant to
Section(8) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DON B. ALLEN AND SHERRY D. ALLEN : DECISION
for Redetermination of a Deficiency or for :
refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year :
1970.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York, on October 15, 1975, at 2:35 P.M. before L. Robert Leisner, Hearing Officer. The taxpayers appeared by Sterling Weaver, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of counsel).

I. Do sections 615(c)(4), 622 and 623(a) and 623(b) of the Tax Law violate the equal protection and due process provisions of the constitutions of New York State and the United States of America when applied to the modification of allocable expenses attributable to items of tax preferences?

1. Petitioners, Don B. Allen and Sherry D. Allen, timely filed New York State income tax returns for the year 1970.

2. A Notice of Deficiency in personal income taxes for the year 1970 was issued on February 4, 1972, against the taxpayers under File No. 0-52101775.

3. The taxpayers timely petitioned for redetermination of the deficiencies.

4. The deficiency notice and statement of audit changes to the petitioners determine additional tax due of \$230.48. This additional tax is attributable solely to modifying Federal itemized deductions for the allocable expenses attributable to the item of tax preference.

5. In their petition, the taxpayers protested against the disallowance of certain of their Federal deductions.

6. The facts in this proceeding are undisputed. Petitioners Don B. Allen and Sherry D. Allen are and have been for all relevant periods residents of the State of New York. For the taxable year 1970 the petitioners had a New York adjusted gross income of \$38,883.00. Their Federal itemized deductions totalled \$10,297.00, including amounts of \$4,165.00 for taxes, \$468.00 for contributions and \$5,637.00 for interest expenses. After making certain adjustments to their Federal itemized deductions, the taxpayers claimed New York itemized deductions in the amount of \$8,434.00.

7. During the taxable year 1970, the petitioners exercised qualified stock options which gave rise to an item of tax preference in the amount of \$30,060.00. A New York State minimum tax of \$231.00

was reported and paid on this item of tax preference. No adjustment was made to the petitioners' Federal itemized deductions for the allocable expenses supposedly attributable to this item of tax preference.

8. Section 615(a) of the Tax Law provides that the New York itemized deductions of a resident individual shall be the total amount of his deductions from Federal adjusted gross income with certain enumerated modifications. One of the subtractions from a taxpayer's Federal itemized deductions is:

"the deductions for allocable expenses attributable to items of tax preference, as defined in subsection (a) of section six hundred twenty-three, if the sum of the items of tax preference of the taxpayer for the taxable year, as defined in subsection (b) of section six hundred twenty-two, exceed the applicable specific deduction described in subsection (c) of such section." N.Y. Tax Law §615(c)(4)

Since the amount of the taxpayers' item of tax preference, \$30,060.00, exceeds the specific deduction of \$20,000.00 for the taxable year, the Income Tax Bureau determined that section 615(c)(4) requires that a modification be made.

9. The amount of the deduction is computed pursuant to the following formula contained in section 623(a):

deductions for allocable expenses	-	(deductions for allocable expenses	X N.Y. adjusted gross income
		(<hr/>
		(N.Y. adjusted gross
		(income + items of tax
		(preference - specific
		(deduction

Allocable expenses are defined in section 623(b) to include the following four deductions permitted by the Internal Revenue Code: (1) interest, (2) taxes, (3) charitable contributions, and (4) amounts deductible by tenant-stockholders of cooperative housing corporations.

10. Petitioners claimed Federal itemized deductions for interest, taxes, and charitable contributions. On their face the deductions for taxes and charitable contributions bear no relationship to any expense incurred in exercising the stock options which gave rise to the item of tax preference. Further, there is no indication in the record and no claim by the Income Tax Bureau that the petitioners' interest expenses were incurred in connection with their incurring the item of tax preference.

11. The statutory formula makes the enumerated Federal itemized deductions subject to reduction whether or not the associated expenses have any relation to the item of tax preference subject to the minimum tax. The taxpayers assert that the statute violates both the due process and the equal protection guarantee of the constitution and to this end they have outlined in their brief examples of the effect of the statute. In many of the examples a taxpayer in a lower income group has his deductions reduced more than taxpayers in a higher income group even though their deductions and tax preference items are identical. The taxpayers assert that such untoward consequences require that the statute be declared unconstitutional in that it does not achieve the purpose intended and it also violates the equal protection clause.

CONCLUSIONS OF LAW

A. That in this case the statutory purpose and the formula are mandatory and we have no discretion as to the formula or the purpose.

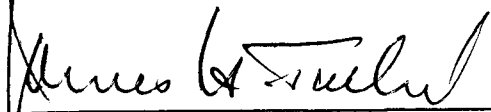
B. That an administrative tribunal has no power to declare a law unconstitutional. The Tax Commission does not have jurisdiction to declare any section of the Tax Law unconstitutional. Therefore, it must be presumed that the sections of the Tax Law in issue are constitutional.

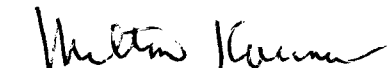
C. That the Notice of Deficiency issued February 4, 1972 against petitioners, Don B. Allen and Sherry D. Allen, is sustained.

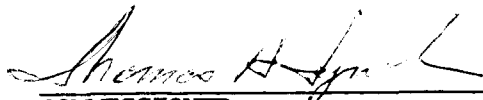
D. That pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER