

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HOLLY S. CLARENDON TRUST  
JOHN S. GILMAN and Another, TRUSTEES  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article (s) 22 of the  
Tax Law for the Year (s) or ~~Revisions~~ 1972

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Denise Burke, 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 August, 1976, she served the within Notice of Decision by (certified) mail upon John S. Gilman, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John S. Gilman, Esq.  
& Max T. Stoner, Esq.  
44 Exchange Street  
Rochester, New York 14614  
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 August, 1976

Denise Burke

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HOLLY S. CLARENDON TRUST  
JOHN S. GILMAN and Another, TRUSTEES  
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 (X) or ~~Period~~ (X) 1972

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State of New York  
County of Albany

Denise Burke , 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 August , 1976, she served the within  
Notice of Decision by (certified) mail upon John S. Clarendon Trust  
John S. Gilman and Another, Trustees  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Holly S. Clarendon Trust  
John S. Gilman, Trustee  
44 Exchange Street  
Rochester, New York 14614  
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 August , 1976.

Denise Burke

Just Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

**August 13, 1976**

**Holly S. Clarendon Trust  
John S. Gilman, Trustee  
44 Exchange Street  
Rochester, New York 14614**

**Dear Sir:**

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 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 OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HOLLY S. CLARENDON TRUST	:	DECISION
JOHN S. GILMAN and Another, Trustees	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1972.	:	

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Petitioner, Holly S. Clarendon Trust, John S. Gilman and another, Trustees, 44 Exchange Street, Rochester, New York 14614, petitioned for redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the year 1972.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York, on October 16, 1975, before L. Robert Leisner, Hearing Officer. The taxpayer appeared by John S. Gilman and Max T. Stoner. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

#### ISSUE

Whether the Holly S. Clarendon Trust was liable for additional income tax and whether the statute imposing such additional tax was constitutional.

FINDINGS OF FACT

1. Petitioner, Holly S. Clarendon Trust, John S. Gilman and another, Trustees, timely filed New York State income tax returns for the year 1972. The total amount of tax paid was \$127,308.00.

2. A Notice of Deficiency in personal income tax for the year 1972 was issued on July 29, 1974 against the taxpayer under File No. F825.

3. The taxpayer petitioned for redetermination of the deficiency in the amount of \$21,228.94.

4. Chapter 718 of the 1973 Laws of New York amended section 618 of the Tax Law to state as follows:

"The New York taxable income of a resident estate or trust means its Federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:.....

"(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs (6), (10) and (11) of subsection (b) and in paragraphs (11) and (13) of subsection (c) of section six hundred twelve."

Section 612(b) states as follows:

"(b) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted income:.....

"(11) In the case of a taxpayer who has deducted one-half of the amount by which net long-term capital gains exceeds net short-term capital loss for the taxable year, one-fifth of the amount as deducted."

Subdivision 4 of the Laws of 1973, Chapter 718, section 2, effective June 11, 1973, added reference to Paragraphs (10) and (11) of section 612(b) of the Tax Law. Section 4 of the Laws of 1973, Chapter 718, effective June 11, 1973, provided in part that the amendment of subdivision 4, section 618, of the Tax Law shall apply to all taxable years beginning on or after January 1, 1972.

5. The overall effect of these amendments was to increase a trust's New York taxable income by adding back twenty percent of the capital gain deduction. The amendments were made retroactive to January 1, 1972.

6. The Holly Clarendon Trust (the "taxpayer") sold stocks as follows during 1972:

<u>Stock</u>	<u>Date of Stock</u>	<u>Gain or (Loss)</u>
920 shares Polaroid Corp.	2/17/72	\$ 92,840
440 shares United Brands	2/17/72	(14,804)
4404 shares Xerox Corp.	2/17/72	584,986
5000 shares Xerox Corp.	3/23/72	672,184

7. The Trust filed a timely 1972 return reporting New York income of \$1,443,274.00 and, after deductions, a taxable income of \$667,003.00. A long-term capital gain deduction of \$667,603.00

was taken on the return. In September, 1973, three months after the amendment to section 618 was enacted, the Department of Taxation and Finance increased the Trust's 1972 taxable income by \$133,620.60.

8. The decision by the Trustees of the Holly Clarendon Trust to sell the stock was made after careful consideration of the New York Tax Law as it existed in 1972. The event giving rise to the tax was entirely within the control of the Trustees. Had the Trustees been aware of this tax, they might not have sold the stock or would have sold less stock. The Trustees had a fiduciary duty to administer and conserve the assets of the Trust for the beneficiary.

9. The taxpayer asserts that the retroactive application of the cited amendment, which increases the Holly Clarendon Trust's 1972 New York taxable income by twenty percent of its long-term capital gain deduction, is so arbitrary and oppressive as to deny due process of law in contravention of the 5th and 14th Amendments of the Constitution of the United States and Article I Section 6 of the Constitution of the State of New York.

#### CONCLUSIONS OF LAW

A. That the State Tax Commission has no jurisdiction to declare a Tax Law unconstitutional. The constitutionality of the Tax Law is presumed at the administrative level of adjudication.

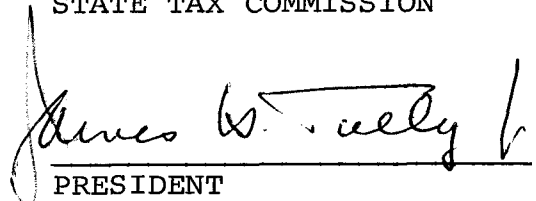
Therefore, it must be presumed that section 4 of Chapter 718 of the Laws of 1973 is constitutional to the extent that it relates to the imposition of additional personal income tax which is the subject of this proceeding.

B. That the taxpayer's petition is denied and the deficiency is sustained.

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

DATED: Albany, New York  
August 13, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER