

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARCUS D. GRAYCK and LOIS B. GRAYCK

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) 1967 and 1968.

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 3rd day of February, 1976, she served the within
Notice of Decision ~~(by certified mail)~~ by (certified) mail upon Marcus D. Grayck
and Lois B. Grayck ~~(the petitioner)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Marcus D. Grayck
Hillsdale Lane
Sands Point, New York 11050
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 the)~~
~~(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

3rd day of February, 1976

Mary Cross

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 3, 1976

Mr. & Mrs. Marcus D. Grayck
Hillsdale Lane
Sands Point, New York 11050

Dear Mr. & Mrs. Grayck:

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.

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,

Handwritten signature of Paul Greenberg

PAUL GREENBERG
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: ~~Records and Representation~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MARCUS D. GRAYCK and LOIS B. GRAYCK : DECISION
for a Redetermination of Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law from the Years :
1967 and 1968. :

Petitioners, Marcus D. Grayck and Lois B. Grayck, filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967 and 1968. (File No. 8-24633871). On September 3, 1974, they advised the State Tax Commission, in writing, that they desired to waive a formal hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

The sole issue herein is the application of Article 22 of the Tax Law to the undistributed income of a corporation taxable for Federal purposes under "Subchapter S" (section 1371 et. seq.) of the Internal Revenue Code.

FINDINGS OF FACT

1. On November 30, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Marcus D. Grayck and Lois B. Grayck, imposing additional personal income tax for the year 1967 in the sum of \$133.51 and for the year 1968 in the sum of \$1,016.53 upon the grounds that the New York State Tax Law makes no provision for any modification for "Subchapter S" corporation income for a New York State resident taxpayer. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,270.13.

2. Natco Business Corporation was formed in New York on April, 1956.

3. On or about November 25, 1958, Natco filed an election to be taxed as a "Subchapter S" corporation. It did not thereafter pay Federal income tax.

4. Natco paid New York franchise taxes under Article 9-A of the Tax Law for all taxable years.

5. The taxpayers included the undistributed income of Natco in the sum reported on line 9 of the Federal income tax form 1040 and paid Federal income tax thereon.

6. The taxpayer, Marcus D. Grayck, computed his New York taxable income as the amount reported on line 9 of the Federal income tax form 1040 as reduced by the amount of undistributed profits included therein. The taxpayer thus did not pay tax on the amount of such undistributed profits.

CONCLUSIONS OF LAW

A. Article 22 of the New York Tax Law may properly be construed to include in the taxpayer's income the "undistributed profits" of a "Subchapter S" corporation. The reference in Tax Law section 612(a) to his "federal adjusted gross income" does not exclude amounts which are also in the taxable income of the corporation. That the Legislature intended to include the "undistributed profits" is shown by Chapter 783 of the Laws of 1962 which amended section 632(b) to define the source of such income and exclude such income from the tax base of a nonresident.

B. The inclusion of undistributed profits in the tax base of the shareholder under Article 22 of the Tax Law and also in the tax base of the corporation under Article 9-A of the Tax Law does not result in discriminatory double taxation since the undistributed profits of a business are included in the tax base of an individual under Article 22 and also in the tax base of the business itself under Article 23 of the Tax Law. The failure to exempt the corporation under Article 9-A is immaterial when such business would otherwise be subject to Article 23 (see Letter of Joseph H. Murphy, March 13, 1961; Prentice-Hall, State and Local Taxes ¶55,275.10).

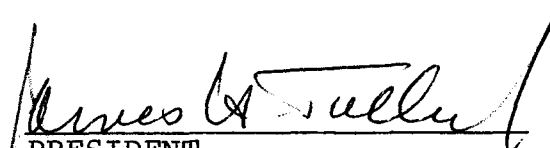
C. It has been held that the taxation under Article 22 of the undistributed profits of a "Subchapter S" corporation does

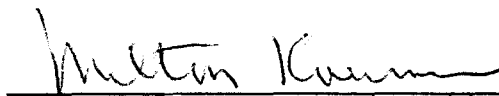
not violate Article 16, section 3 of the New York State Constitution (Garlin v. Murphy, 51 Misc. 2d 477).

D. The petition is denied and the deficiencies are affirmed together with such interest, if any, as may be due pursuant to section 684 of the Tax Law.

DATED: Albany, New York
February 3, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER