

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAURICE A. GROSS

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

For a Redetermination of a Deficiency or
a Refund of Personal Income :
Taxes under Article ~~(8)~~ 22 of the
Tax Law for the Year(s) 1970 and 1971 :

State of New York
County of Albany

Donna Scranton, 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 12th day of May, 1976, she served the within
Notice of Decision (~~xxx Determination~~) by (certified) mail upon Maurice A.

Gross (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Maurice A. Gross
126 Lawn Terrace
Mamaroneck, New York 10543

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

12th day of May, 1976

Janet Mack

Donna Scranton

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAURICE A. GROSS

For a Redetermination of a Deficiency or
a Refund of Personal Income :
Taxes under Article ~~(X)~~ 22 of the :
Tax Law for the Year(s) 1970 and 1971 :

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

State of New York
County of Albany

Donna Scranton, 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 12th day of May, 1976, she served the within
Notice of Decision ~~(XXXXXXXXXXXXX)~~ by (certified) mail upon Jules M.

Fields, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jules M. Fields, Esq.
Northcourt Building
White Plains, New York 10601

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

12th day of May, 1976.

Janet Mack

Donna Scranton



STATE OF NEW YORK.
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
May 12, 1976

Maurice A. Gross
126 Lawn Terrace
Mamaroneck, New York 10543

Dear Mr. Gross:

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.

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
SUPERVISING TAX

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

STATE TAX COMMISSION

DECISION

ISSUE

Did petitioner substantiate deductions for alimony payments?

FINDINGS OF FACT

1. Petitioner, Maurice A. Gross, timely filed New York State income tax returns for the years 1970 and 1971. He deducted from gross income periodic payments of alimony in the amounts of \$6,210.00 in 1970 and \$6,745.00 in 1971.

2. On July 30, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Maurice A. Gross, allowing \$4,160.00 of the \$6,210.00 claimed as an alimony deduction for the year 1970 upon the grounds that said additional amount was not substantiated upon audit. A short term capital loss carry-over of \$1,000.00 and a business expense of \$4,956.00 were allowed. These items are not being contested by the taxpayer. Accordingly, a Notice of Deficiency was issued in the amount of \$119.55.

3. On September 30, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Maurice A. Gross, reducing the alimony deduction of \$6,745.00 claimed to \$2,080.00 for the year 1971 upon the grounds that he failed to substantiate said deduction. Accordingly, a Notice of Deficiency was issued in the amount of \$749.34.

4. Petitioner, Maurice A. Gross, was divorced from his first wife, Barbara Gross, on June 6, 1966, by a Mexican court. At a term of the Family Court of the State of New York, County of Westchester on November 30, 1970, Judge Wood ordered

petitioner, Maurice A. Gross, to pay his first wife, Barbara Gross, the sum of \$40 per week for her support and maintenance and \$30 to each of his two children, commencing December 1, 1970. He was further ordered to comply with an agreement made on May 20, 1966, except as modified. The agreement of May 20, 1966, required a payment of \$346.66 per month for her support and support of the children. A supplemental agreement appended thereto provided that any payments in excess of allowance shall be received by her as additional alimony so that he could consider it as an additional deduction on his income tax.

5. Petitioner, Maurice A. Gross, in 1970 made periodic alimony payments to his first wife Barbara Gross, for a total of \$6,210.00. The first order of the Westchester County Family Court dated June, 1966, required alimony payments of \$346.66 per month for a yearly total of \$4,159.92. His total alimony payments for 1970 exceeded the required sum by a total of \$2,050.00.

6. Petitioner, Maurice A. Gross, made periodic payments to his first wife in 1971 pursuant to the second order of the Family Court of Westchester County in December, 1970. This order required payments totaling \$2,080.00 to the wife as alimony. His total payments to his wife and children amounted to \$6,745.00. His total alimony payments for 1971 exceeded the required sum by a total of \$4,665.00.

CONCLUSIONS OF LAW

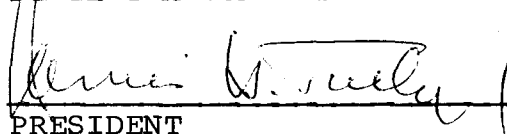
A. That periodic alimony payments made by petitioner, Maurice A. Gross, are deductible as they are made pursuant to the order of the Westchester Family Court dated June 8, 1966, as are the payments made pursuant to the second order issued by this court effective December 1, 1970, to the extent as required by said order. Any additional payments made are gratuitous. He is under no legal obligation to do so. The additional payments are therefore not deductible.

B. That payments made by the petitioner, Maurice A. Gross, pursuant to the December 1, 1970, order of the Westchester Family Court for the support of the children are not considered alimony payments. These payments are considered as support of dependents. Such payments are not included in the wife's income and therefore she would not be liable for income tax thereon.

C. That the petitions of Maurice A. Gross are denied and the notices of deficiencies dated July 30, 1973, and September 30, 1974, are sustained.

DATED: Albany, New York
May 12, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER