

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT H. SHAW and ANNE L. SHAW

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the Year ~~(1966)~~ 1967. :

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 14th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Dorian M. Goldstein, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Dorian M. Goldstein, CPA
Harry Goodkin and Company
115 Broadway
New York, New York 10006
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

14th day of September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT H. SHAW and ANNE L. SHAW

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(s) or Period(s) 1967. :

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 14th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Robert H. Shaw and Anne L. Shaw (~~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. Robert H. Shaw
c/o Harry Goodkin and Co.
115 Broadway
New York, New York 10006
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

14th day of September, 1976

Catherine Steele

Janet Mack



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 14, 1976

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

Mr. & Mrs. Robert H. Shaw
c/o Harry Goodkin and Co.
115 Broadway
New York, New York 10006

Dear Mr. & Mrs. Shaw:

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

Please take further notice that pursuant to
Section ~~xx~~ **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

In the Matter of the Petition	:	
of	:	
ROBERT H. SHAW and ANNE L. SHAW	:	DECISION
for a redetermination of a deficiency or for	:	
refund of personal income tax under Article 22	:	
of the Tax Law for the year 1967.	:	

Petitioners, Robert H. Shaw and Anne L. Shaw, c/o Harry Goodkin and Co., 115 Broadway, New York, New York 10006, filed a petition under section 689 of the Tax Law for a refund of personal income tax under Article 22 of the Tax Law for the year 1967.

In lieu of a hearing, petitioners submitted their case to the State Tax Commission on the file of the Income Tax Bureau. Dorian M. Goldstein C.P.A. of Harry Goodkin and Company represented petitioners. The said file has been duly examined and considered.

ISSUES

(I) Whether expected refunds of State and local income taxes which had been paid in 1967 should be included in gross income in 1970 where said refund is attributable to a claim for a deduction in 1967 for net operating losses sustained in 1970; and (II) Whether the expected refund of State and local income taxes, if properly included in gross income in 1970, may be, nevertheless, under section 612(c)(7) of the Tax Law, used to reduce New York adjusted gross income for 1967 instead of for 1970 are the issues in this case.

FINDINGS OF FACT

1. Petitioner, Robert H. Shaw, is a general partner in the firm of Shaw & Adrian, which is engaged in the securities business and which acts as a specialist on the New York Stock Exchange. The firm for its fiscal year ending May 31, 1970, showed substantial losses. On its books and on its tax returns the firm had computed its 1970 loss by first including as accrued income the amount of \$33,389.34 calculated as the amount to be received as refunds of unincorporated business taxes paid to New York State and New York City for past years which in the future would be refunded to the firm by reason of net operating loss carryback deduction under section 701(2) of the Tax Law.

2(a). Petitioners' 1967 Federal return showed taxable income before exemptions of \$90,503.27 and after exemptions of \$88,103.27.

2(b). Petitioners' 1967 New York return showed taxable income before exemptions of \$122,300.38 and after exemptions \$119,900.38. This was based on Federal figures with adjustments reducing income in the amount of \$150.00 for the deduction for life insurance premiums and increasing income in the amount of \$19,057.04 because of income taxes deducted in the Federal return and in the amount of \$12,890.07 for an unspecified reason.

3(a). Petitioners' 1970 Federal return showed as taxable income a loss before exemptions of \$75,026.71 and after exemptions of \$77,526.71.

3(b). Petitioner's 1970 New York return showed as taxable income a loss before exemptions of \$107,151.05 and after exemptions of \$109,651.05. This was based upon Federal figures with adjustments reducing income in the amount of \$33,389.34 for refunds of New York unincorporated business taxes included in Federal income and in the amount of \$150.00 for the New York

deduction for life insurance premiums and increasing income in the amount of \$1,415.00 because of income taxes deducted on the Federal return.

4. The Federal authorities allowed a net operating loss carryback deduction of \$75,026.71 as claimed by petitioner. This reduced his 1967 taxable income from \$88,103.27 to \$13,076.56.

5. Petitioners' claim for refund for \$10,690.09 is based upon computing a net operating loss deduction of \$107,151.05 directly from his New York 1970 return (see paragraph 3b above) and applying that against his 1967 taxable income of \$119,900.38 to reduce that to \$12,749.33.

6. The petitioners' claim for refund for 1967 based upon a net operating loss carryback has been allowed, but in an amount as calculated by the Income Tax Bureau. The Income Tax Bureau first recomputes the proper amount of the Federal carryback deduction for 1967 by reducing the amount of \$75,026.71 claimed by petitioners' by the amount of \$3,954.78 for certain non-business items as required by applicable Federal law and which petitioners do not contest. The net amount of \$71,071.93 is applied directly against the taxable income of \$119,900.38 shown on the New York return as filed to arrive at taxable income as adjusted of \$48,820.45.

CONCLUSIONS OF LAW

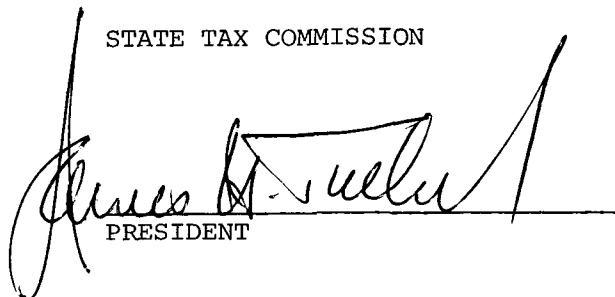
A. That the proper amount of a net operating loss is determined by Federal law. Under the rulings of the U. S. Treasury Department, the amount of a net operating loss, for an accrual basis taxpayer, must be reduced by the inclusion in gross income of amounts of any expected refunds in State and local income taxes attributable to a carryback to previous years of the net operating loss (Rev. Rul. 65-190; 1965-2 Cum Bull 150).

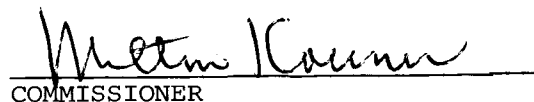
B. That the amount of a claimed refund of New York State taxes which has been included in petitioners' Federal gross income may be subtracted in computing New York adjusted gross income for 1970, but not for 1967, by reason of section 612(c)(7) of the Tax Law.

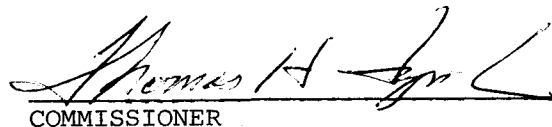
C. That because of the above reasons, the denial of the claim for refund was proper.

DATED: Albany, New York
September 14, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER