

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT J. GURNEY & GLORIA E. GURNEY

AFFIDAVIT OF MAILING

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 Period(s) :
1963, 1964, 1965

State of New York
County of Albany

Marsina Donnini, 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 15th day of July, 1977, she served the within

Notice of Decision by (certified) mail upon Robert J. Gurney
and Gloria E. Gurney

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Robert J. Gurney
988 5th Ave.
New York, NY

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

15th day of July, 1977.

Marsina Donnini

Just Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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of
ROBERT J. GURNEY & GLORIA E. GURNEY :

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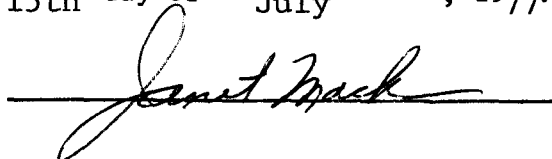
Marsina Donnini , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of July , 1977, she served the within
Notice of Decision by (certified) mail upon Morton Levine
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morton Levine, Esq.
122 East 42nd St.
New York, NY

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

15th day of July , 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

July 15, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. and Mrs. Robert J. Gurney
988 5th Ave.
New York, NY

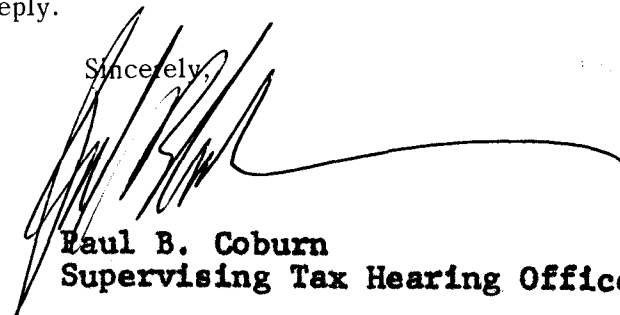
Dear Mr. and Mrs. Gurney:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



Paul B. Coburn
Supervising Tax Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

The representative for the petitioners, in writing, waived a formal hearing and requested that a decision be rendered by the Tax Commission based upon the record contained in the file. After due consideration of said record, the State Tax Commission renders the following decision.

ISSUES

I. Whether the petitioners are entitled to a net capital-loss carryover deduction, which was not allowed on their Federal income tax return for the same period.

II. Whether a husband and wife who file a joint Federal income tax return, but elect to file separate State income tax returns, are required to compute their New York adjusted gross incomes separately.

III. Whether section 654(c)(3) of the Tax Law applies to the allowance of a carryover loss deduction, where the deduction is not allowable for Federal income tax purposes.

FINDINGS OF FACT

1. Petitioners, Robert J. Gurney and Gloria E. Gurney, his wife, filed joint Federal income tax returns for 1962, 1963, 1964 and 1965. They filed separate New York State resident income tax returns on combined forms (Form IT-208) for the years 1962, 1963, 1964 and 1965.

2. The petitioner, Robert J. Gurney, had reported on his Federal returns in previous years, capital gains made on the sale of capital stock on the installment basis. The sale was made in 1955, the year in which the petitioners were nonresidents. For the year 1962, the petitioners, while being New York State residents, and reporting a capital gain on their Federal return, reported a capital loss of \$121,955.68 on their New York State tax returns. On the Federal return for the year 1962, the petitioners

deducted in full, losses which amounted to \$243,923.33 when netted against an installment gain of \$280,152.55, which related to 1955 when they were nonresidents. This resulted in a reported net capital gain of \$18,120.60.

3. For the year 1963 (the last year of the installments received by petitioners, and excluded for New York State tax purposes), the petitioners deducted the capital gain and \$1,000.00 from the capital loss claimed in 1962 as a carryover loss deduction. For the years 1964 and 1965, the petitioners deducted the gains and also \$1,000.00 from the carryover loss from 1963. For the years 1963, 1964 and 1965, the petitioners reported gains on their Federal income tax returns.

4. On February 20, 1967, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Robert J. Gurney, disallowing net capital loss carryover deductions of \$9,152.22, \$53,544.54 and \$59,258.92 for the years 1963, 1964 and 1965, respectively. As a result, additional income tax was imposed in the amounts of \$795.09, \$4,678.21 and \$5,925.89 for the respective years 1963 through 1965, plus interest of \$955.41. Accordingly, a Notice of Deficiency was issued totalling \$12,354.60. The petitioner, Robert J. Gurney, timely filed a petition for redetermination or for refund of said deficiency.

5. On February 20, 1967, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Gloria E. Gurney, disallowing net capital-loss carryover deductions of \$3,706.34 for 1963 and \$3,352.44 for 1964. As a result, additional income tax was imposed in the amounts of \$174.09 and \$335.24 for the respective years 1963 and 1964, plus interest of \$66.89. Accordingly, a Notice of Deficiency was issued totalling \$576.22. The petitioner, Gloria E. Gurney, timely filed a petition for redetermination or for refund of said deficiency.

6. The net result of the capital transactions reported by the petitioners on their joint 1962 Federal return was a capital gain. No net capital loss carryover was established for Federal tax purposes. The petitioners reported net capital gains on their Federal income tax returns for the years 1963, 1964 and 1965.

CONCLUSIONS OF LAW

A. That the petitioners are not entitled to a net capital-loss carryover deduction, where a similar deduction was not allowed on their Federal income tax return for the same period, within the intent and meaning of section 612(a) of the Tax Law.

B. That where a husband and wife determine their Federal income tax on a joint return but determine their New York income taxes separately, they shall determine their New York adjusted

gross incomes separately, just as if their Federal adjusted gross incomes had been determined separately. (Section 612(f) of the Tax Law and 20 NYCRR 116.6).

C. That there is no provision in the New York State Income Tax Law for the allowance of a net capital-loss carryover deduction based on the items of income and loss reported on the New York State income tax return, within the intent and meaning of section 654(c)(3) of the Tax Law.

D. That the petitions of Robert J. Gurney and Gloria E. Gurney be and the same are hereby denied.

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

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER