

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH F. KERN, III

AFFIDAVIT OF MAILING

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) ~~xxxx~~ Period (s) 1967. :

State of New York
County of Albany

Violet Walker, 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 24th day of June, 1977, she served the within Notice of Decision by (certified) mail upon Joseph F. Kern, III

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

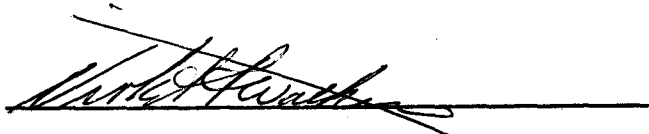
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

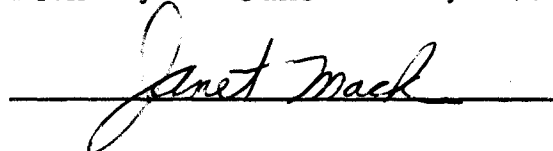
Mr. Joseph F. Kern, III
96 East Bayberry Road
Islip, New York 11751

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~~) (~~xxxx~~) petitioner herein and that the address set forth on said wrapper is the last known address of the (~~representative of~~) (~~xxxx~~) petitioner.

Sworn to before me this
24th day of June, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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JOSEPH F. KERN, III

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For a Redetermination of a Deficiency or :
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of Personal Income :
Taxes under Article (X) 22 of the :
Tax Law for the Year ~~(or Period)~~ 1967. :

State of New York
County of Albany

Violet Walker, 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 24th day of June, 1977, she served the within Notice of Decision by (certified) mail upon John Peter McElroy

(representative of) the petitioner in the within proceeding,

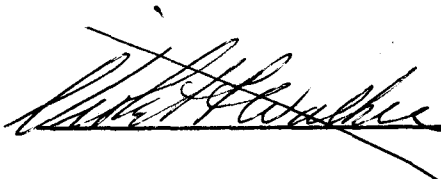
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

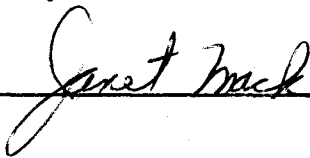
John Peter McElroy, Esq.
Shea & McElroy
1727 Veterans Memorial Highway
South Hauppauge, New York 11722

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
24th day of June, 1977.







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

June 24, 1977

TELEPHONE: (518) 457-1723

Mr. Joseph F. Kern, III
96 East Bayberry Road
Islip, New York 11751

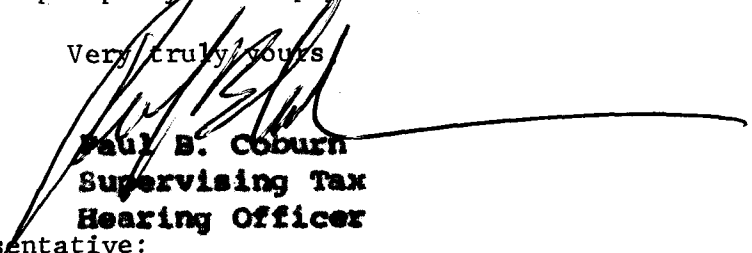
Dear Mr. Kern:

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

Please take further notice that pursuant to
Section(**§**) **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:

section 337(d)(2) of the Internal Revenue Code, was entitled to a modification reducing Federal adjusted gross income in arriving at New York adjusted gross income for one-half of his proportionate share of the corporation taxes paid.

FINDINGS OF FACT

1. Petitioner, Joseph F. Kern, III, filed a New York State resident personal income tax return for 1967. Thereon, he reported income from the sale or exchange of property of \$169,779.46, and, in computing New York adjusted gross income, subtracted \$45,779.46. Petitioner attached the following explanation of the subtraction: "Federal taxable income reflects an adjustment made under section 337(d) which is not recognized for New York tax purposes." The return indicated tax due of \$12,674.45, which amount was remitted. An amended return, containing minor changes, was subsequently filed.

2. On February 24, 1970, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, Joseph F. Kern, III, stating additional personal income tax due for the year 1967 of \$4,653.00, with interest to that date of \$518.67. The statement advised petitioner that the New York Tax Law contains no provision for modification entitling the deletion of section 337(d) income, which was properly includable in Federal adjusted

gross income. Accordingly, a Notice of Deficiency dated February 24, 1970 was issued to petitioner asserting additional personal income tax for the year 1967, as computed in the above-mentioned Statement of Audit Changes.

3. Petitioner, Joseph F. Kern, III, was a minority stockholder of the Erie New York Corporation. As part of the liquidation of that corporation, pursuant to a plan of complete liquidation entered into on October 7, 1967, petitioner received approximately \$250,000.00 on December 29, 1967.

4. On his Federal income tax return for the year 1967, petitioner, Joseph F. Kern, III, pursuant to the provisions of section 337(d)(1) of the Internal Revenue Code, added the figure \$91,558.92, which represented his proportionate share of corporation tax on the corporate gain from the sale of assets, to the \$250,000.00 payment he received December 29, 1967. From the resultant sum, \$341,558.92, he subtracted the basis, \$2,000.00, and reported a net long-term gain of \$339,558.92. Accordingly, 50 percent of this last figure was treated as income from the sale or exchange of property. Finally, pursuant to section 337(d)(2) of the Internal Revenue Code, petitioner added to taxes withheld and estimated tax payments the \$91,558.92 figure, since said proportionate share of the corporate tax is deemed to be paid by petitioner. This credit resulted in petitioner being entitled to a refund of \$5,275.31.

5. Petitioner, Joseph F. Kern, III, asserts that section 612(c)(7) of the Tax Law affords basis for the modification claimed on his New York income tax return.

CONCLUSIONS OF LAW

A. That section 612 of the Tax Law provides that the New York adjusted gross income of a resident individual means his Federal adjusted gross income, as defined in the laws of the United States for the taxable year, subject to modifications specified therein.

B. That subdivision (c) of section 612 contains no provision for a modification reducing Federal adjusted gross income for the addition of a proportionate share of corporation taxes deemed to have been paid by a shareholder pursuant to U.S. Code, Tit. 26, § 337(d).

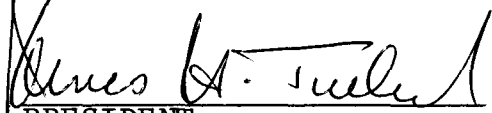
C. That section 612(c)(7) of the Tax Law permits a subtraction for the amount of any refund or credit for overpayment of income taxes imposed by another taxing jurisdiction, to the extent properly included in gross income for Federal income tax purposes.

D. That petitioner's Federal adjusted gross income contained no refund or credit for overpayment of income taxes, and that the credit taken by petitioner pursuant to U.S. Code, Tit. 26, § 337(d)(2) was utilized in the computation of tax, and was not included in Federal adjusted gross income.

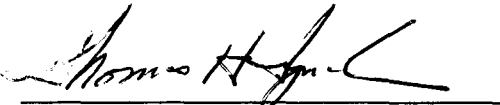
E. That the petition of Joseph F. Kern, III is denied and the Notice of Deficiency issued February 24, 1970 is sustained.

DATED: Albany, New York
June 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER