

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORRIS B. MC FARLANE

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) ~~XXXXXX~~ Period (s) :
1972

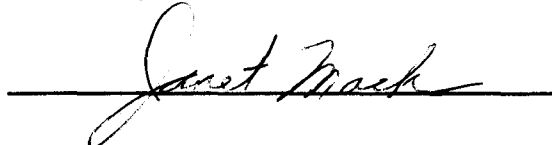
State of New York
County of Albany

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 30th day of June, 19 77, she served the within
Notice of Decision by (certified) mail upon Norris B. Mc Farlane
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Norris B. Mc Farlane
4202 Lower River Road
Youngstown, New York
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)~~
~~XXXXXX~~ 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

30th day of June, 19 77





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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Donald C. Lubick, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Donald C. Lubick, Esq.
1800 One M & T Plaza
Buffalo, New York 14203

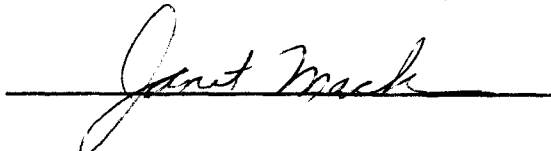
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

30th day of June, 1977.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

June 30, 1977

TELEPHONE: (518) ~~457-1723~~

Norris B. Mc Farlane
4202 Lower River Road
Youngstown, New York

Dear Mr. Mc Farlane:

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

Please take further notice that pursuant to
Section(1) **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	:	
NORRIS B. MC FARLANE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1972.	:	

Petitioner, Norris B. McFarlane, residing at 4202 Lower River Road, Youngstown, New York, filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972. (File No. 00491).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on November 30, 1976, at 10:45 A.M. Petitioner appeared by Donald C. Lubick, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner's pre-payment in full of an indebtedness of his former wife is a permissible alimony deduction in full in the year paid when the separation agreement contained explicit clauses governing the payment of alimony, additional alimony, and credits against alimony for payments in reduction of such indebtedness.

FINDINGS OF FACT

1. Petitioner timely filed an Individual Personal Income Tax Return for the year 1972 on or about March 22, 1973 and incorporated therein was an itemized deduction (specifically set forth in the Federal return at Schedule 5) for alimony.

2. The alimony deduction represented payments made by petitioner to his former wife pursuant to paragraphs 4(a), (b) and (c) of the separation agreement constituting alimony, additional alimony and payments in reduction of said wife's indebtedness on a demand note and a bond of mortgage to be set off against additional alimony requirements.

3. The Income Tax Bureau issued a Notice of Deficiency dated May 20, 1974 covering the year 1972 together with a Statement of Audit Changes bearing the same date in the sum of \$4,533.08.

4. Petitioner's representative, Daniel E. Connell, CPA, filed a petition for redetermination or refund of personal income taxes for the year 1972 on behalf of petitioner dated August 14, 1974.

5. A separation agreement was executed by petitioner and his then wife on December 7, 1970, which agreement called for the payment of alimony (as support and maintenance) under paragraph 4(a), additional alimony under paragraph 4(b) and paragraph 4(c) permitted set-off by petitioner against payments due under paragraph 4(b) for any payments made by petitioner in reduction of wife's indebtedness under a demand note and a bond and mortgage.

6. Petitioner did, in fact, pre-pay in full the then outstanding balance of wife's indebtedness, as aforementioned, totaling \$30,547.63.

7. Petitioner bore an obligation to his former wife under the aforementioned separation agreement to pay alimony and additional alimony, and both of those obligations were subject to the contingencies of death of either spouse, remarriage of the wife, or change in the economic status of either spouse.

8. That the obligations of petitioner under paragraphs 4(a) and (b) under the aforementioned agreement were clearly obligations to be discharged by periodic payments.

CONCLUSIONS OF LAW

A. That conformity between New York and Federal Tax Law should be achieved and observed with regard to determination as to eligibility or qualification of alimony deductions.

B. That the Internal Revenue Code (1954), section 71, 71(a) and 215(a) clearly allow deductions for alimony paid by petitioner and compels his former spouse to include such payments in her gross income so long as such obligations are required by a formal decree or agreement, subject to contingencies and are in discharge of legal obligations of the petitioner arising out of the marital relationship, all as hereinabove determined.

C. That the payments made by petitioner to his former spouse under paragraphs 4(a), (b) and (c) of the aforementioned agreement constitute periodic payments, subject to contingencies, (even though not made at regular intervals) in light of Federal Tax Court Rulings and Decisions notwithstanding the lack of a clear definition in the Code or Regulations (R.K. Young, 10 TC 724, J.H. Lee, 10 TC 834; Rev. Ruling 59-190, 1959-1 CB23)

D. That Code section 71(c)(2) clearly permits the deductibility of pre-payments and Regulation 1.71-1(d)(2) enhance the viability of the deduction through setting up other limitations of a maximum of 10% of the principal sum. However, that limitation is irrevelant to this matter since the payments at issue are clearly made pursuant to a formal agreement and subject to contingencies and the 10% limitation applies only to discharge of a fixed principal sum. (R.W. Clark, Jr., 58 TC 519)

E. That the Code at section 71 clearly allows a deduction for back alimony in the year paid if it would have been deductible had it been timely made, and further that such payments of back alimony are still categorized as periodic payments though not paid at regular intervals and constituting discharge or compromise of arrearages. (Holahan, 55-1 USTC, 222 F. 2d 82, J.C. Grant 54-1, USTC, 209 F 2d 430; Rev. Ruling 550457, 1955-2 CB 527).

F. That, by negative connotation, the code accepts and permits alimony deductions for payments made in advance, as is allowed for back payments, as recognized by various luminaries and reported in volumes such as 1977 CCH Federal Tax Guide, 1726, and 1976 CCH Standard Federal Tax Reporter, section 820.046, and as set forth in Hayintin v. Commissioner, 75-1 USTC 9108, 10th Cir. 1974.

G. That neither the Internal Revenue Code nor the New York State Tax Law specifically prohibit deductions for prepaid alimony meeting all requisite standards.

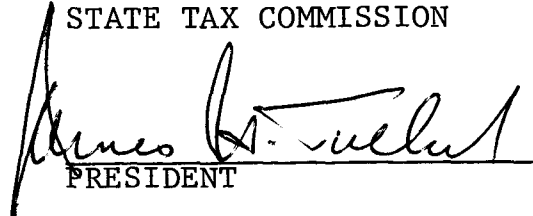
H. That petitioner's pre-payment of the balance of wife's indebtedness constituted periodic payments of alimony in that paragraph 4(c) clearly provides that such payments shall be set-off against periodic alimony payments required by paragraph 4(b).

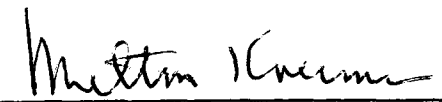
I. That petitioner could clearly have deducted additional alimony payments made to his former wife in the years in which such payments would have been made, had the principal balance of wife's obligations not been paid by petitioner, resulting in all to a sum far in excess of the amount claimed as a deduction in petitioner's 1972 New York State income tax return.

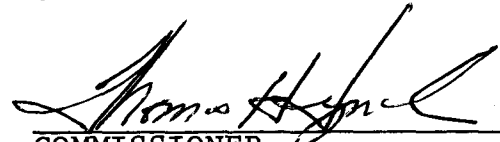
J. That the petition of Norris B. McFarlane is granted and the Notice of Deficiency issued May 20, 1974 is cancelled.

DATED: Albany, New York
June 30, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER