

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARK J. MILLARD and CLAIRE MILLARD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (39) 22 of the :  
Tax Law for the Year(s) or Period(s) :  
1960

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 14th day of June, 1977, she served the within

Notice of Decision

by <sup>Certified</sup> ~~(certified)~~ mail upon Mr. Mark J. Millard

and Claire Millard ~~(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. Mark Millard  
42 Wall Street  
New York, New York 10005

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 June, 1977.

*Violet Walker*

*Janet Mack*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARK J. MILLARD and CLAIRE MILLARD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~20~~ 22 of the  
Tax Law for the Year(s) ~~or Period(s)~~  
1960

State of New York  
County of Albany

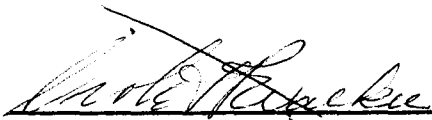
Violet Walker, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of June, 1977, she served the within Notice of Decision by <sup>Certified</sup> ~~Registered~~ mail upon Mr. Lewis Helphand

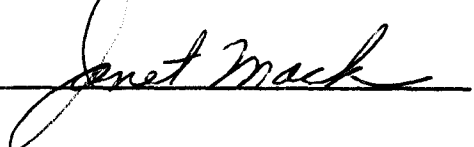
(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Lewis Helphand  
342 Madison Avenue  
New York, New York 10017

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 June, 1977.

  
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STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227  
June 14, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Mr. and Mrs. Mark Millard  
42 Wall Street  
New York, New York 10005

Dear Mr. and Mrs. Millard:

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

Please take further notice that pursuant to Section ~~(s)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision 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

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In the Matter of the Petition :  
of :  
MARK J. MILLARD AND CLAIRE MILLARD : DECISION  
for Revision of a Determination or for :  
Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year 1960. :

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Petitioners, Mark J. Millard and Claire Millard, 42 Wall Street, New York, New York 10005, applied for revision of a determination or for refund of personal income tax under Article 22 of the Tax Law for the year 1960. (File No. 00583).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 26, 1976 at 2:45 P.M. The petitioners appeared by Lewis Halphand, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether a modification of Federal gross income, to deduct the amount of rebate of interest prepaid on a loan to purchase Federal treasury bonds, was properly disallowed by the Income Tax Bureau.

1. Petitioners, Mark J. Millard and Claire Millard, timely filed a joint New York State resident income tax return for the year 1960.

2. Petitioners, Mark J. Millard and Claire Millard, itemized the changes they made from Federal adjusted gross income in Schedule A of the income tax form IT-201. One of the subtractions was \$38,458.35, described as a rebate of interest to carry Federal exempt bonds.

3. By a Notice of Additional Assessment No. B-997464 dated January 29, 1962, the Income Tax Bureau assessed petitioners, Mark J. Millard and Claire Millard, additional New York State income tax amounting to \$3,461.26.

4. On September 19, 1962, petitioners, Mark J. Millard and Claire Millard, timely filed an application for revision or refund of personal income taxes.

5. The Income Tax Bureau held a field audit and by a letter dated June 4, 1973 advised petitioners, Mark J. Millard and Claire Millard, that their application for revision or refund had been disallowed in full.

6. On August 14, 1973, petitioners, Mark J. Millard and Claire Millard, filed a demand for a hearing on the denial of their application for a refund.

7. During 1959, petitioners, Mark J. Millard and Claire Millard, paid interest of \$45,229.17 on a bank loan, the proceeds of which were used to acquire United States treasury bonds. The amount of this interest was not deducted as interest expense on petitioners' 1959 New York State income tax.

8. In 1960, the petitioners, Mark J. Millard and Claire Millard, his wife, prepaid the loan originally made in order to purchase United States treasury bonds that were exempt from New York State income taxes. Petitioners received a rebate of the prepaid interest in the amount of \$38,458.35.

9. In the Federal income tax return for the calendar year of 1960, the petitioners allegedly reported the refund of prepaid interest of \$38,458.35 as interest income. This amount was subtracted as an adjustment to the Federal adjusted gross income in order to arrive at the New York adjusted gross income.

10. The New York State income tax return for 1959 was not introduced into evidence by the petitioner at the formal hearing, nor were Federal income tax returns for 1959 or 1960 offered at the hearing.

#### CONCLUSIONS OF LAW

A. That interest expense incurred to purchase or carry obligations, the income of which is exempt from tax under

Article 22 of the Tax Law, section 612(b)(4) shall be added to Federal adjusted gross income. That there is no provision of the Tax Law that allows for subtracting from the Federal adjusted gross income a refund of prepaid interest paid on a loan to purchase or carry tax exempt securities.

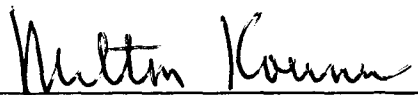
B. That in the absence of specific authorization in the Tax Law for making a modification to the Federal adjusted gross income, the Income Tax Bureau was legally correct in denying petitioners' application for redetermination of income tax because of a refund of prepaid interest.

C. That the petitioners, Mark J. Millard and Claire Millard, his wife, have failed to show that the Income Tax Bureau's denial of the application for refund of income taxes paid for 1960 was erroneous under applicable Tax Law. The application for revision or refund of personal income taxes for the year 1960 is in all respects denied.

DATED: Albany, New York  
June 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER