

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES I. PETSCHKEK

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 ~~(x)~~ 1970.:

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 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Jack Wong

(representative of) the petitioner in the within proceeding,

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

as follows:
Jack Wong, CPA
Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, New York 10004

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

26th day of August, 1977.

Marsina Donnini

Janet Muech

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES I. PETSCHKEK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (a) 22 of the :
Tax Law for the Year (~~1976~~) 1970. :

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 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Charles I. Petschek

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

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

as follows: Mr. Charles I. Petschek
c/o Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, New York 10004

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
26th day of August, 1977.

Marsina Donnini

Janet Mock



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

August 26, 1977

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

Mr. Charles I. Petschek
c/o Oppenheim, Appel, Dixon & Co.
One New York Plaza
New York, New York 10004

Dear Mr. Petschek:

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 ~~(5)~~ **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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CHARLES I. PETSCHKEK
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1970.

DECISION

Charles I. Petschek, c/o Oppenheim, Appel, Dixon & Co.,
140 Broadway, New York, New York 10005, filed a petition for
redetermination of a deficiency or for refund of personal income
tax under Article 22 of the Tax Law for the year 1970.
(File No. 01906).

A formal hearing was held before Nigel G. Wright, Hearing
Officer, at the offices of the State Tax Commission, Two World
Trade Center, New York, New York on December 11, 1975 at 1:00 P.M.

The petitioner appeared by Jack Wong, CPA of the accounting
firm of Oppenheim, Appel, Dixon & Co. The Income Tax Bureau
appeared by Peter Crotty, Esq. (Michael Alexander, Esq., of counsel).

ISSUES

I. Whether the receipt by the petitioner of capital gains
from an estate in 1970 constituted items of tax preference.

II. Whether the receipt by the petitioner of capital gains which were distributed by an estate which files on a fiscal year basis was subject to the New York minimum income tax.

III. Whether the modification of allocable expenses attributable to items of tax preference was proper.

FINDINGS OF FACT

1. Charles Petschek, Sr. died on December 18, 1959 and Charles Petschek, Jr., the petitioner herein, was appointed executor of his estate. The estate filed a final return for the fiscal year ending February 28, 1970.

2. During its fiscal year ending February 28, 1970, the estate disposed of its security holdings at a long term gain of \$3,846,149.52. All gains were realized prior to October 1, 1969, the date the Reform Act of 1969 took effect. The proceeds of the sale were distributed prior to February 28, 1970 but after January 1, 1970.

3. The petitioner reported his income on a cash calendar-year basis. In 1970, the petitioner received from the Estate of Charles Petschek, Sr., a capital gain distribution amounting to \$817,224.00.

4. Charles I. Petschek and Elaine Petschek filed a New York State combined income tax return in 1970 (Form IT-208 for resident married persons filing a joint Federal return who elect to file

separate New York State returns). The petitioner, Charles I. Petschek, claimed on Form IT-220 (New York State minimum income tax computation schedule) that the capital gains were not subject to items of tax preference because they were realized before December 31, 1969. The petitioner executed a consent extending the period of limitation upon assessment of personal income taxes to April 15, 1975.

5. On July 29, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner for the year 1970 imposing additional income tax of \$11,000.82, plus interest of \$2,170.52, for a total of \$13,171.34. Accordingly, it issued a Notice of Deficiency therefor.

6. The basis for the additional personal income tax is set forth in the Statement of Audit Changes as follows:

"Upon audit it has been determined that under section 622(b) of Article 22 of the New York Tax Law, the items of tax preference are defined as meaning the Federal items of tax preference and section 1.57(d) of the Internal Revenue Regulations includes in the definition of the Federal tax preference items, '(1) The capital gain deduction allowable under section 1202.' Section 652(c) of the Internal Revenue Code also states, 'If the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this section shall be based upon the amount of income of the trust for any taxable year or years ending within or with his taxable year.'

Based on the above, the husband's share of net long term capital gains of \$373,219.00 (i.e. \$379,826.00 less \$6,607.00) reported on line 15(a) of schedule D as well as the accelerated

depreciation on real property in the amount of \$307.00 are tax preference items and the minimum income tax thereon is computed as shown below. Modification of allocable expenses attributable to items of tax preference are required under section 623 of the New York State Income Tax Law and includible in the New York taxable income pursuant to section 615(c)(4) of the New York State Tax Law. This modification is also included in the computation below. Other items audited have been accepted as filed."

7. The Estate of Charles Petschek, Sr. filed a U. S. Fiduciary Income Tax return for the fiscal year ending February 28, 1970, but reported no taxable income since it distributed its income to the beneficiaries of the Estate after January 1, 1970.

8. The petitioner had net long term capital gains of \$373,219.00, which gains were not included in its declaration of New York State minimum tax.

CONCLUSIONS OF LAW

A. That the capital gains received by the petitioner in 1970 constitute items of tax preference as defined in section 57(a)(9) of the Internal Revenue Code and the Internal Revenue Service Regulations, and also section 622(b) of the Tax Law.

B. That Internal Revenue Service Regulation Section 1.58-2 provides, in part, that: "For example, if a trust has \$100,000.00 of capital gains for the taxable year, all of which are distributed to A. an individual, the item of tax preference apportioned to A under section 57(a)(9) and section 1.57-1(i) is \$50,000.00."

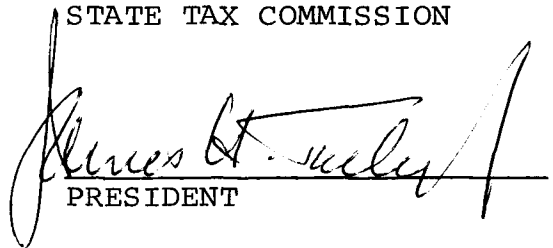
C. That the tax preference items received by the petitioner in 1970 are subject to minimum tax within the intent and meaning of section 622 of the Tax Law as added by Laws of 1970, chapter 1005 and amended by ch. 1006. (Laws of 1970, applicable to taxable years commencing after December 31, 1969).

D. That the modification of allocable expenses attributable to items of tax preference was proper, in accordance with the provisions of sections 623 and 615(c) of the Tax Law.

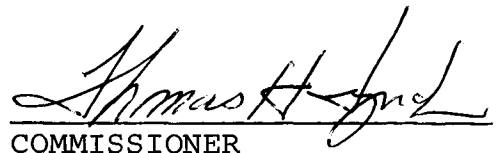
E. That the Statement of Audit Changes and Notice of Deficiency are correct; that the petition for redetermination of the deficiency be and the same is hereby denied.

DATED: Albany, New York
August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER