

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JEROME L. STERN

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) or Period(s) 1970 :

State of New York  
County of Albany

John Huhn , 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 September , 1977 , she served the within  
Notice of Decision by (certified) mail upon Jerome L. Stern  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Jerome L. Stern  
607 Main Street  
Westhampton Beach  
Long Island, 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) 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 September , 1977.

Janet Mack

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JEROME L. STERN

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~~) or Period(s) 1970 :

State of New York  
County of Albany

John Huhn, 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 September, 1977, she served the within Notice of Decision by (certified) mail upon Bernard L. Wind (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bernard L. Wind, CPA.  
One Penn Plaza  
New York, New York 10001

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 September, 1977.

Janet Mack

John Huhn



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

September 15, 1977

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

Jerome L. Stern  
607 Main Street  
Westhampton Beach  
Long Island, New York

Dear Mr. Stern:

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(x) **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,

John J. Sollecito  
Director Tax Appeals  
Bureau

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  
JEROME L. STERN  
for Redetermination of a Deficiency or  
for Refund of Personal Income Taxes  
under Article 22 of the Tax Law for the  
Year 1970.

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DECISION

Petitioner, Jerome L. Stern, residing at 607 Main Street, Westhampton Beach, Long Island, New York, 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. 01391).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 27, 1976 at 2:45 P.M. Petitioner appeared by Bernard L. Wind, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Arthur Rosen, Esq., of counsel).

ISSUE

Whether charitable contributions and interest paid to the Internal Revenue Service on Federal Gift Tax deficiencies for prior years, are modifications reducing Federal itemized deductions and increasing personal income tax due.

FINDINGS OF FACT

1. Petitioner, Jerome L. Stern, and his wife Jane Stern, timely filed a New York State resident income tax return for the year 1970, as cash basis taxpayers.

2. On July 30, 1973, the Income Tax Bureau issued a Statement of Audit Changes against Jerome L. Stern, stating additional personal income tax due in the sum of \$3,313.92, plus interest thereon based on the absence of a modification reducing Federal itemized deductions. Accordingly, a Notice of Deficiency was issued to petitioner, Jerome L. Stern.

3. On petitioner Jerome L. Stern and his wife, Jane Stern's Federal income tax schedule for itemized deductions, deductions were taken in the sum of \$34,482.59 for taxes, \$57,490.00 for contributions and \$25,909.64 for interest expense. State and local taxes comprised \$21,491.28 of the taxes itemized on the Federal return.

4. The interest expense included \$20,912.38 which was interest paid the Internal Revenue Service on gift tax deficiencies. Contributions included \$51,610.00, which represented the fair market value of properties donated to various charities.

5. Petitioner, Jerome L. Stern and his wife, Jane Stern, computed and paid to the United States and to New York State a minimum income tax on items of tax preference totaling \$122,199.08.

CONCLUSIONS OF LAW

A. That section 615(c)(4) of the Tax Law provides for a modification reducing the Federal itemized deductions of a resident

individual, where such deductions are for allocable expenses attributable to items of tax preference as defined in 623(a), and where the sum of the items of tax preference exceeds the specific deduction provided in section 622(c), which deduction was \$20,000.00 for 1970.

B. That section 623(a) of the Tax Law provides that the deductions for allocable expenses attributable to items of tax preference of a resident individual, are computed by multiplying the total deductions for allocable expenses by a fraction, the numerator being New York adjusted gross income for the taxable year, and the denominator being New York adjusted gross income for the taxable year plus the sum of items of tax preference of the taxpayer minus the specific deduction described in 622(c). Allocable expenses and the sum of items of tax preference of the taxpayer are defined in subsection (b) of section 623.

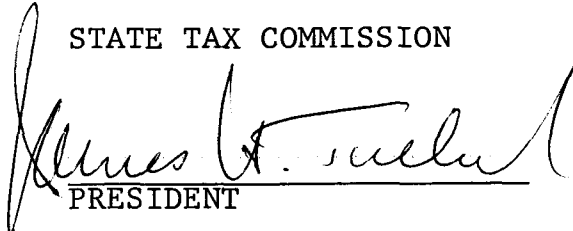
C. That subsection (b) of section 623 of the Tax Law describes the allocable expenses of a resident individual as including interest deductible solely by reason of section 163 of the Internal Revenue Code of 1954; and that charitable contributions are deductible under section 170 of the Internal Revenue Code.

D. That interest deducted by a cash basis taxpayer is a deduction in the year paid.

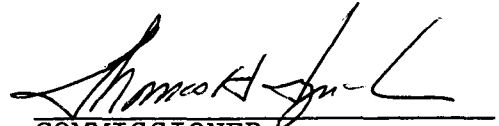
E. That the petition of Jerome L. Stern is denied and the Notice of Deficiency issued July 30, 1973, is sustained.

DATED: Albany, New York  
September 1, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER