

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SAMUEL I. and BEATRICE C. GOLD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the Year ~~(8) or (Period)~~ 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 13th day of September, 1978, she served the within
Notice of Decision by (certified) mail upon Samuel I. & Beatrice C. Gold

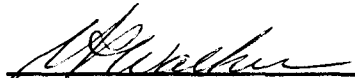
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Samuel I. & Beatrice C. Gold
926 East 23rd Street
Brooklyn, New York 11210

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)~~
~~XXXXX~~ 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

13th day of September, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SAMUEL I. and BEATRICE C. GOLD

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 (~~XXXXXX~~) 1970 :

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of New York , 1978 , he served the within
Notice of Decision by (certified) mail upon Robert W. Taylor, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert W. Taylor, Esq.
160 Broadway
New York, New York 10038

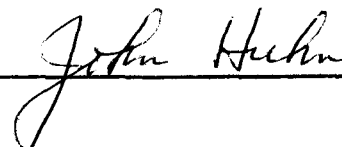
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of September , 1978.







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

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

September 13, 1976

Samuel I. & Beatrice C. Gold
926 East 23rd Street
Brooklyn, New York 11210

Dear Mr. & Mrs. Gold:

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 ~~65~~ **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,

MICHAEL ALEXANDER
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	:	
SAMUEL I. and BEATRICE C. GOLD	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioners, Samuel I. and Beatrice C. Gold, 926 East 23rd Street, Brooklyn, New York 11210, 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. 13834).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 14, 1977 at 2:45 P.M. Petitioners appeared by Robert Taylor, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether certain items of capital gain incurred by petitioners are items of tax preference, thus subjecting said items to the Minimum Income Tax.

II. Whether said items of capital gain were properly assessable in the tax year in question and, thus, subject to the Minimum Income Tax which became effective on January 1, 1970.

III. Whether a portion of the income purportedly earned by a partnership (of which petitioner Samuel I. Gold was a partner) was earned outside New York State and, thus, not subject to New York income tax.

FINDINGS OF FACT

1. Petitioners, Samuel I. Gold and Beatrice C. Gold, timely filed a New York State resident combined income tax return (Form IT-208) for 1970.

2. The Income Tax Bureau issued a Statement of Audit Changes to each petitioner on May 21, 1973 for 1970 in the sums of \$154.52 and \$5,455.68, respectively, plus interest. Accordingly, it timely issued a Notice of Deficiency therefor.

3. On August 16, 1973, petitioners, Samuel I. and Beatrice C. Gold, timely filed a petition for redetermination of a deficiency for the taxable year 1970.

4. On his return, petitioner Samuel I. Gold indicated an excess of net long-term capital gain from the partnership for the fiscal year 1969-1970, over short-term capital loss amounting to \$383,900.00.

5. Petitioner Samuel I. Gold had allowable expenses under section 623(b) amounting to \$3,436.00 for 1970, adjusted gross income of \$14,456.00, a tax preference item of 50% of excess of

net long-term capital gain over net short-term capital loss amounting to \$191,950.00, and a specific deduction under section 622(c) as a married-individual-filing-jointly of \$10,000.00.

6. There is no proof in the record that any of the partnership income attributable to petitioner for the taxable year 1970 was earned from a source outside New York State. Further, as a New York State resident, petitioner Samuel I. Gold is taxed on the entire amount of his distributive share of the partnership income, wherever earned (Tax Law section 612, 617(b)).

CONCLUSIONS OF LAW

A. That the entire partnership income reported for the partnership's fiscal year 1969-1970 is taxable income for 1970, in accordance with section 702 of the Internal Rev. Code, which states that a partner's share of the income is fully reported for the taxable year in which the partnership year ends, regardless of when said income is actually received.

B. That since there is no basis in the record for allocating the income earned outside New York State, it must be held that all income earned by the partnership is attributable to New York sources and, thus, fully taxable.

C. That petitioner Samuel I. Gold did not properly compute the amount of Federal deductions properly deductible in arriving at New York taxable income, inasmuch as certain allowable expenses deductible on the Federal return are attributable to items of tax preference under section 622 of the Tax Law, thereby reducing the

itemized deductions allowable in arriving at New York taxable income. Petitioners properly applied the section 623(a) formula and properly arrived at the section 615(c)(4) modification sum, which is not a deduction for New York income tax purposes. The Income Tax Bureau's calculations were in all respects proper.

D. That petitioner Samuel I. Gold was properly found to have imposed upon him a minimum income tax pursuant to Tax Law section 601-a, which was effective January 1, 1970 and which was properly applicable to partnership income earned by the end of the partnership year, regardless of when received (See Conclusion of Law "A", supra). The Minimum Income Tax was properly applied and assessed as the statutory percentage of the capital gain tax preference item (\$191,950.00), less the specific allowable deduction of \$10,000, under section 622. The Income Tax Bureau's calculations in this regard were entirely proper.

E. That the petition of Samuel I. and Beatrice C. Gold is in all respects denied.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER