

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
NEIL A. MC CONNELL

and
SERENA R. MC CONNELL

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) ~~XXXXXXXXXX~~ 1971 & :
1973.

AFFIDAVIT OF MAILING

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 , 19 78, She served the within

Notice of Decision by (certified) mail upon Neil A. & Serena R.
McConnell, c/o Williamson &
Green ~~XXXXXX~~ the petitioner in the within proceeding,

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

as follows: Neil A. & Serena R. McConnell
c/o Williamson & Green
280 Park Ave.
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)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

13th day of September , 19 78

Swack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
NEIL A. MC CONNELL :
and
SERENA R. MC CONNELL :
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(s) ~~or Period(s)~~ 1971 & :
1973.

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of September, 19 78, she served the within
Notice of Default Order by (certified) mail upon Edward H. Hein, Esq. of
Breed, Abbott & Morgan
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edward H. Hein, Esq. of
Breed, Abbott & Morgan
1 Chase Manhattan Plaza
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

13th day of September, 19 78

[Signature]

John Huhn



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

September 13, 1978

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

Neil A. & Serena R. McConnell
c/o Williamson & Green
280 Park Ave.
New York, New York 10017

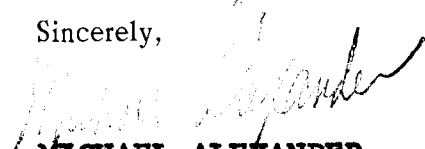
Dear Mr. & Mrs. McConnell:

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,


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 :
NEIL A. MC CONNELL : DECISION
and :
SERENA R. MC CONNELL :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1971 and :
1973. :
:

Petitioners, Neil A. McConnell and Serena R. McConnell, c/o Williamson and Green, 280 Park Avenue, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1973 (File No. 14981).

The petitioners, by their attorney, Edward H. Hein, Esq., of the firm of Breed, Abbott & Morgan and the Income Tax Bureau by Peter Crotty, Esq., Counsel for the Department of Taxation and Finance, entered into a stipulation of facts dated June 15, 1976. The parties hereto have agreed to waive a formal hearing and to submit this matter to the State Tax Commission, based on the entire record in the file, including the stipulation.

ISSUE

Whether an interest expense which is reasonable in amount and paid during the years in issue for the production of income, constitutes an allocable expense pursuant to the provisions of section 623(b) of the Tax Law.

1. Petitioners, Neil A. McConnell and Serena R. McConnell, were New York State residents during 1971 and 1973. They filed joint New York State resident income tax returns for the aforementioned years.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioners on February 25, 1974 for personal income tax due for the year 1971, re-computing their New York minimum income tax by including in allocable expenses interest of \$927,545.56. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued against petitioners for \$9,237.95, plus interest of \$1,031.32. Since the Income Tax Bureau did not receive a petition within the statutory time provided therefor, it issued a Notice and Demand for payment of the deficiency. On October 8, 1974, petitioners paid the Income Tax Bureau \$10,269.27, plus additional interest of \$269.57. Petitioners filed a claim for refund of said amount on October 25, 1974.

3. On January 27, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for 1973 which provided, in part, that:

"As total interest expense in the amount of \$1,152,361.67 was claimed as an itemized deduction on your New York return, this amount must be used in the computation of Section 615(c)(4) modification. Therefore, we have recomputed the modification as follows:

MODIFICATION FOR ALLOCABLE EXPENSES

Interest		\$1,152,361.67
Taxes		72,465.86
Contributions		<u>1,831,206.79</u>
Total Allocable Expenses		\$3,056,034.32

N.Y. adjusted gross income	\$4,174,427.21
Total items of tax preference	<u>2,108,069.63</u>
Total	\$6,282,496.84
Less: Specific deduction	<u>5,000.00</u>
Balance	\$6,277,496.84

Less:

$\frac{\$4,174,427.21}{\$6,277,496.84} \times \$3,056,034.32 =$	<u>2,032,210.11</u>
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Modification for allocable expenses

\$1,023,824.11."

Accordingly, a Notice of Deficiency was issued therefor, imposing additional income tax of \$53,934.03, with interest of \$3,180.48, for a total due of \$57,114.51. Petitioners timely filed a petition for redetermination of said deficiency.

4. During 1971 petitioner Neil A. McConnell paid interest of \$477,291.71 to Bankers Trust Company on his promissory note bearing interest at 1/4 of 1% over prime, representing his indebtedness incurred to acquire a \$10,000,000.00, 8% convertible note of Pan Ocean Oil Corporation, on which he received \$600,000.00 interest income during 1971. During 1973 he received \$732,055.00 in interest income from Pan Ocean Oil Corporation on the convertible note and paid \$725,090.14 in interest expense to Bankers Trust Company on his note.

5. Petitioner Neil A. McConnell's interest payments referred to in Finding of Fact "4," above, were ordinary and necessary expenses incurred for the production of interest income received by him on the convertible note of Pan Ocean Oil Corporation and for the possibility of income or gain resulting from an increase in the market price of the Pan Ocean Oil Corporation's common stock, into which such note was convertible.

6. During 1971 and 1973, he paid interest of \$32,678.35 and \$407,816.38, respectively, on other indebtedness incurred by him to acquire corporate securities and real property which he held as investments. Such interest payments were ordinary and necessary expenses for the production of income.

7. During 1971 and 1973, petitioner Neil A. McConnell paid interest of \$115,697.23 and \$9,330.92, respectively, on loans incurred by him to purchase jet aircraft held and used principally for the production of rental or charter income.

8. During 1971 he paid \$301,878.27 on indebtedness assumed or incurred by him as his contribution to the capital of (or in connection with distribution of assets to him from) partnerships in which he was a general partner. Petitioner Neil A. McConnell's general partnership interest and the assets distributed with respect thereto were held by him for the production of income.

9. None of the interest expense paid by him and referred to above was interest on indebtedness incurred or continued in order to purchase or carry obligations or other property, the income from which is exempt from Federal or New York State income taxes.

CONCLUSION OF LAW

A. That section 615(a) of the Tax Law provides that the New York itemized deductions of a resident individual shall be the total amount of his deductions from Federal adjusted gross income with certain enumerated modifications. One of the subtractions from a taxpayer's Federal itemized deductions is:

"the deductions for allocable expenses attributable to items of tax preference as defined in subsection (a) of section six hundred twenty-three if the sum of the items of tax preference of the taxpayer for the taxable year, as defined in subsection (b) of section six hundred twenty-two, exceed the applicable specific deduction described in subsection (c) of such section." (N.Y. Tax Law §615(c)(4).)

B. That allocable expenses are defined in section 623(b) to include the following four deductions permitted by the 1954 Internal Revenue Code: (1) interest (2) taxes (3) charitable contributions and (4) amounts deductible by tenant-stockholders of cooperative housing corporations.

C. That the amount of deduction is computed pursuant to the formula contained in section 623(a) of the Tax Law.

D. That the statutory formula makes the enumerated Federal itemized deductions subject to reduction, whether or not the associated expenses have any relation to the item of tax preference subject to the minimum tax.

E. That the interest expenses paid by petitioners in 1971 and 1973 constituted allocable expenses attributable to items of tax preference within the intent and meaning of sections 623(b) and 615(c) of the Tax Law.

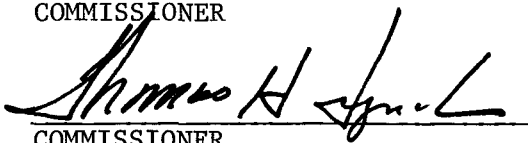
F. That the claim of petitioners for a refund for 1971 is denied, and that the petition of Neil A. and Serena R. McConnell for 1973 be and the same is hereby denied.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER