

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK J. and MARY K. MEEHAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(s)~~ 22 of the :  
Tax Law for the Year ~~(s)~~ or Period ~~(s)~~ 1972. :

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 20th day of September , 1978 , ~~he~~ served the within  
Notice of Decision by (certified) mail upon Frank J. and Mary K.

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

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

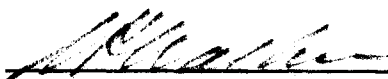
as follows: Frank J. and Mary K. Meehan  
52 B Independence Parkway  
Whiting, New Jersey 08759

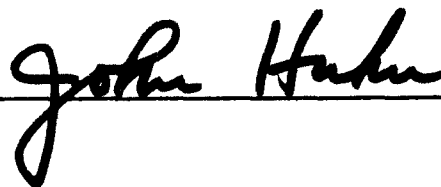
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

20th 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 20, 1978

Mr. and Mrs. Frank Meehan  
52 S Independence Parkway  
Basking, New Jersey 08759


Dear Mr. and Mrs. Meehan:

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(s) 50 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 6 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,

  
Joseph Chyrmak  
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Pensioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
FRANK J. and MARY K. MEEHAN  
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1972.      DECISION

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Petitioners, Frank J. and Mary K. Meehan, 53 B. Independence Parkway, Whiting, New Jersey 08759, 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 1972 (File No. 12249).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 27, 1977 at 10:45 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the remainder of a lump-sum retirement distribution (which was not subject to New York State personal income tax as a long term capital gain deduction) is an item of tax preference subject to the New York State minimum income tax.

FINDINGS OF FACT

1. Petitioners, Frank J. and Mary K. Meehan, filed a New York State income tax resident return for 1972, wherein they reported a lump-sum retirement distribution as a long term capital gain.

2. The Income Tax Bureau issued a Notice of Deficiency, on the grounds that the remaining portion of the lump-sum distribution (a long term capital gain deduction) which was not subject to New York State personal income tax was an item of tax preference subject to the New York State minimum income tax. In addition, modifications pursuant to sections 612(b)(1) and 615(c)(4) of the Tax Law were made.

3. Petitioner Frank J. Meehan received a lump-sum retirement distribution from the Connecticut General Life Insurance Company during 1972 and reported it as a long term capital gain.

4. Petitioner contended that he filed his New York State income tax resident return for 1972, based on the information and advice given to him by the Income Tax Bureau. He also contends that it did not inform him about the minimum income tax or the modifications pursuant to section 612(b)(11) and section 615(c)(4) of the Tax Law. Therefore, he reasoned that he should not be held responsible for the deficiency now due.

CONCLUSIONS OF LAW

A. that regardless of whose advice the petitioners may or may not have followed, the ultimate responsibility for the filing of a tax return, as well as the payment of any tax liability, is upon the petitioners in accordance with the meaning and intent of section 651 of the Tax Law and 20 NYCRR 145.1.

B. That a long term capital gain deduction is an item of tax preference subject to the minimum income tax in accordance with the meaning and intent of section 57(a)(9)(A) of the Internal Revenue Code and section 622 of the Tax Law.

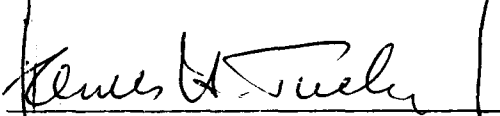
C. That the modifications pursuant to sections 612(b)(11) and 615(c)(4) of the Tax Law were properly applied.

D. That the petition of Frank J. and Mary K. Meehan is denied and the Notice of Deficiency issued August 25, 1975 in the sum of \$1,394.70 is sustained, together with such additional interest as may be lawfully owing.

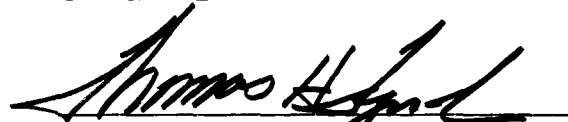
DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER