

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
J. Reid & E. Louise Barton :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1971, 1972. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon J. Reid & E. Louise Barton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Reid & E. Louise Barton
10 Cady Ave.
Nichols, NY 13812

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
J. Reid & E. Louise Barton :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1971, 1972. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon T. Vance Hinkson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. T. Vance Hinkson
317 Main St.
Towanda, PA 18848

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
23rd day of May, 1980.

Joanne Krapp

J. Vredenburg

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

May 23, 1980

J. Reid & E. Louise Barton
10 Cady Ave.
Nichols, NY 13812

Dear Mr. & Mrs. Barton:

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) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
T. Vance Hinkson
317 Main St.
Towanda, PA 18848
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
J. REID BARTON and E. LOUISE BARTON : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1971 and 1972.

Petitioners, J. Reid Barton and E. Louise Barton, 10 Cady Avenue, Nichols, New York 13812, 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 1972 (File No. 13069).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on September 12, 1979 at 2:45 P.M. Petitioner J. Reid Barton appeared with T. Vance Hinkson, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether a New York State resident may exclude from New York gross income the undistributed taxable income from a Pennsylvania corporation that the petitioners elected to be taxed as a small business corporation for Federal income tax purposes.

FINDINGS OF FACT

1. Petitioners, J. Reid Barton and E. Louise Barton, timely filed New York State income tax resident returns for 1971 and 1972. Petitioners did not include in total New York Income the undistributed taxable income of

\$12,584.79 and \$10,405.35 for 1971 and 1972, respectively, from a Pennsylvania corporation that the petitioners elected to be taxed as a small business corporation for Federal income tax purposes.

2. On February 24, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1971 and 1972, asserting personal income tax of \$3,037.77, plus interest of \$478.67, for a total of \$3,516.44. The Notice was issued on the grounds that Federal adjusted gross income was the starting point for New York adjusted gross income, plus or minus any applicable New York State modifications. As there were no New York State modifications governing the exclusion of Sub-Chapter S income, regardless of source within or without New York State, the 1971 and 1972 tax liabilities were recomputed accordingly.

3. Petitioner J. Reid Barton is owner and president of a Pennsylvania corporation which does no business in New York State. The corporation pays a corporation tax to the State of Pennsylvania. Petitioner J. Reid Barton contended that he should not have to pay taxes to New York State on the undistributed taxable income from the Pennsylvania corporation.

CONCLUSIONS OF LAW

A. That section 1373(b) of Internal Revenue Code provides that:

"AMOUNT INCLUDED IN GROSS INCOME.--Each person who is a shareholder of an electing small business corporation on the last day of a taxable year of such corporation shall include in his gross income, for his taxable year in which or with which the taxable year of the corporation ends, the amount he would have received as a dividend, if on such last day there had been distributed pro rata to its shareholders by such corporation an amount equal to the corporation's undistributed taxable income for the corporation's taxable year. For purposes of this chapter, the amount so included shall be treated as an amount distributed as a dividend on the last day of the taxable year of the corporation."

B. That section 612(a) of the Tax Law states that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

That there is no modification to reduce federal adjusted gross income by the undistributed taxable income from a small business corporation.

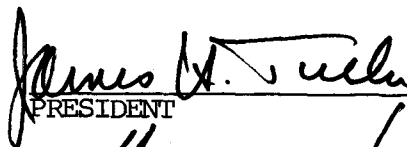
C. That pursuant to section 612(a) of the Tax Law petitioners, J. Reid Barton and E. Louise Barton, were required to include in New York adjusted gross income their undistributed taxable income from the Pennsylvania corporation.

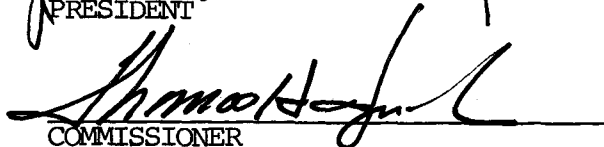
D. That the petition of J. Reid Barton and E. Louise Barton is denied and the Notice of Deficiency issued February 24, 1975 is sustained, together with such additional interest as may be lawfully owing.

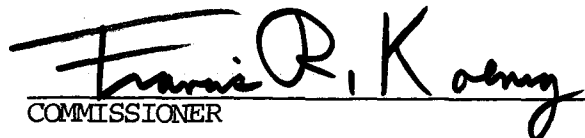
DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER