

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alfred H.. & Ray Lawrence :
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 F/Y/E 6/30/71. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Alfred H.. & Ray Lawrence, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred H.. & Ray Lawrence
520 Raymond St.
Westfield, NJ 07090

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
18th day of July, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alfred H.. & Ray Lawrence :
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 F/Y/E 6/30/71. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Stuart Kessier and Martin Greif the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

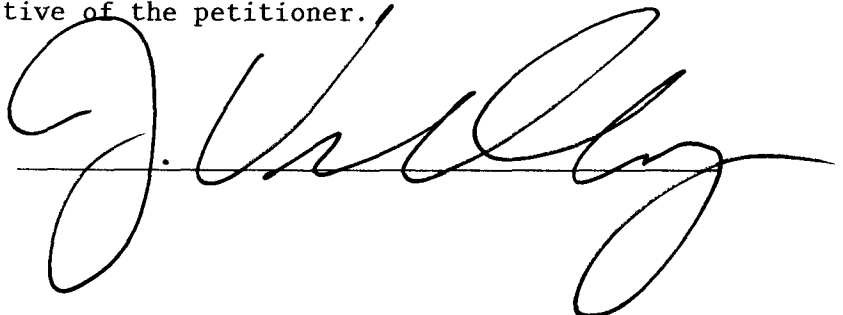
Mr. Stuart Kessier and Martin Greif
Goldstein, Golub, Kessler & Co.
245 Park Ave.
New York, NY 10017

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 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
18th day of July, 1980.

Detroit A Bank



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

July 18, 1980

Alfred H.. & Ray Lawrence
520 Raymond St.
Westfield, NJ 07090

Dear Mr. & Mrs. Lawrence:

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
Stuart Kessier and Martin Greif
Goldstein, Golub, Kessler & Co.
245 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALFRED H. LAWRENCE and RAY LAWRENCE : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Fiscal :
Year Ending June 30, 1971. :

Petitioners, Alfred H. Lawrence and Ray Lawrence, 520 Raymond Street, Westfield, New Jersey 07090, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the fiscal year ending June 30, 1971 (File No. 12197).

A formal hearing was held before George F. Murphy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 10, 1977 at 9:15 A.M. Petitioners appeared by Goldstein, Golub, Kessler & Company, P.C. (By Stuart Kessler and Martin Greif, of said firm). The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether the statute of limitations for the issuing of a Notice of Deficiency had expired.

II. Whether an item of tax preference realized in fiscal year ending June 30, 1971 is subject to minimum income tax when such item of tax preference was the result of an installment sale consummated during the year 1969.

FINDINGS OF FACT

1. Petitioners, Alfred H. Lawrence and Ray Lawrence, timely filed a New York State income tax resident return for fiscal year ending June 30, 1971.

No Federal Schedule D or other information was attached to the return indicating the computation for the \$376,303.00 sale or exchange of property reported on said return. No minimum income tax schedule was filed with the return.

2. On January 3, 1973, petitioners' representative submitted to the Audit Division, as requested by the Division, a copy of Federal Schedule D for the fiscal year ended June 30, 1971.

3. On April 17, 1973, the Audit Division issued a Statement of Audit Changes imposing minimum tax on the long-term capital gain deduction reported on the Federal Schedule D as an installment sale.

4. On December 13, 1974, the Audit Division sent to petitioners waivers for an extension to April 15, 1976 of the statutory period of limitations for fiscal years ending June 30, 1971 and June 30, 1972. Neither petitioner signed the waivers.

5. On September 29, 1975, the Audit Division issued to petitioners a Notice of Deficiency together with the Statement of Audit Changes imposing personal and minimum income taxes of \$11,158.60, plus interest of \$2,647.95, for a total of \$13,806.55. The notice also indicated that

"If both husband and wife sign the consent, the overpayment of \$1,500.00 claimed for the Fiscal Year Ending 6/30/72 plus interest of \$265.95 totaling \$1,765.95 due you will be applied against this deficiency leaving a balance still due of \$12,040.60."

6. Petitioners contended that for the fiscal year ended June 30, 1971, the three year statutory period for assessment of a deficiency expired October 15, 1974. They further contended that since the long-term capital gain recognized for said year resulted from a sale made at a time when capital gains were not characterized as items of tax preference, the imposition of the minimum tax constitutes ex post facto taxation of a transaction consummated before enactment of the minimum tax.

CONCLUSIONS OF LAW

A. That petitioners failed to disclose in the return filed for fiscal year ending June 30, 1971, or in a statement attached to said return in a manner adequate to apprise the Tax Commission that an item of tax preference was reported on said return. The tax may be assessed at any time within six years after the return was filed if an individual omits from his New York adjusted gross income or the sum of his items of tax preference an amount properly includible therein which is in excess of twenty-five percent of the amount of New York adjusted gross income or the sum of the items of tax preference stated in the return (Section 683(d)(1) of the Tax Law).

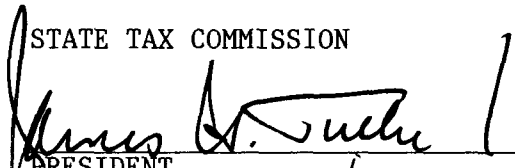
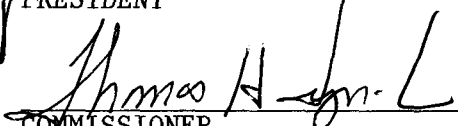
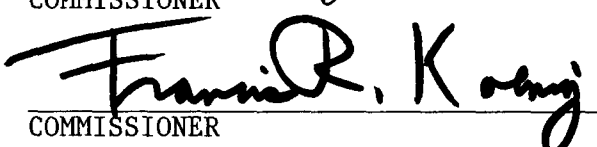
B. That the submission of Federal Schedule D after the due date for the return cannot avoid the extended assessment period where the originally filed return did not report the tax preference item (I. Goldring, 20 T.C. 79).

C. That in the case of installment sales the law in effect at the time the payment is received, not at the time of the sale, determines the character of the income (Snell v. Commission, 38-2 U.S.T.C. ¶19417, 97 F2d 891, Klein 42 T.C. 1000).

D. That the petition of Alfred H. Lawrence and Ray Lawrence is denied and the Notice of Deficiency dated September 29, 1975 is sustained together with interest lawfully due.

DATED: Albany, New York

JUL 1 8 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER