

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alan & Laura Moss :
AFFIDAVIT OF MAILING
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 Year 1972. :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Alan & Laura Moss, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

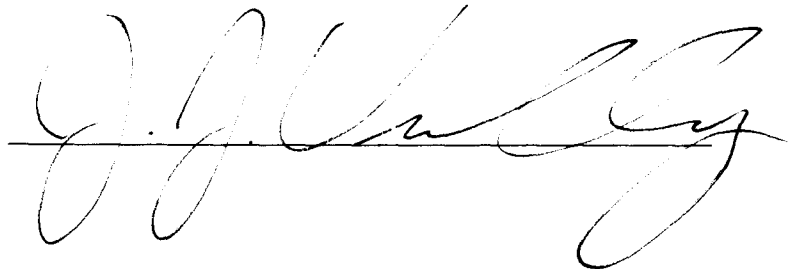
Alan & Laura Moss
180 Riverside Dr.
New York, NY 10024

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
7th day of July, 1980.

Deborah A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alan & Laura Moss :
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 Year 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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Bernard Rabin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

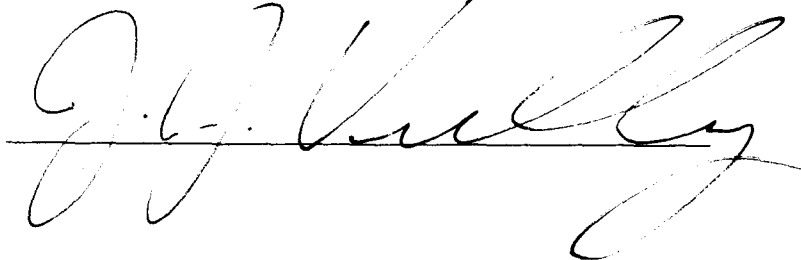
Mr. Bernard Rabin
2111 White Plains Rd.
Bronx, NY 10462

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
7th day of July, 1980.

Esther A. Bank



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

July 7, 1980

Alan & Laura Moss
180 Riverside Dr.
New York, NY 10024

Dear Mr. & Mrs. Moss:

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
Bernard Rabin
2111 White Plains Rd.
Bronx, NY 10462
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ALAN MOSS and LAURA MOSS
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1972.

DECISION

Petitioners, Alan Moss and Laura Moss, 180 Riverside Drive, New York, New York 10024, 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. 15709).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 14, 1979 at 9:15 A.M. Petitioners appeared by Bernard Rabin, Esq. The Audit Division appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner, Laura Moss, may value a mortgage received from the sale of real property at its fair market value.

FINDINGS OF FACT

1. Petitioners, Alan Moss and Laura Moss, timely filed New York State combined income tax resident returns for the year 1972, on which Alan Moss reported, as income attributable solely to him, a gain of \$33,089.00 on the sale or exchange of capital assets. In November, 1975 petitioners filed an amended combined return, wherein the \$33,089.00 gain on the sale or exchange of capital assets was removed from the husband's income and included in Laura

Moss's income. The amended return sought a net refund of \$328.28.

2. On January 16, 1976, the Income Tax Bureau issued a Statement of Audit Changes to petitioners wherein the gain on the sale or exchange of capital assets, as reported on the amended return, was increased from \$33,089.00 to \$43,983.50. Due to the increase in capital gains, the 20 percent long-term capital gain modification was also increased from \$6,475.00 to \$8,653.70. The Statement of Audit Changes also computed a modification for allocable expenses pursuant to section 615(c)(4) of the Tax Law and a minimum income tax liability on items of tax preference. Accordingly, on April 12, 1976 a Notice of Deficiency was issued to petitioners for additional tax of \$6,939.18 plus interest of \$1,557.01 for a total due of \$8,496.19. The total due as shown on the Notice of Deficiency was reduced by the overpayment due by the husband totaling \$4,253.48, leaving a balance due of \$4,242.71.

3. Petitioner, Laura Moss, sold property she owned located at 249 Central Park West, New York, New York, in June, 1972. She received a net sales price of \$171,777.00, which consisted of \$106,777.00 in cash or its equivalent and a second mortgage note with a face value of \$65,000.00.

4. Petitioners reported on both their original and amended returns the second mortgage note at a fair market value of \$43,000.00. Petitioners contended that this mortgage note was properly discounted pursuant to Internal Revenue Code section 1001(a) and (b).

5. The Audit Division contended that the second mortgage note should be reported at its face value of \$65,000.00 since "We do not have sufficient information to determine the basis for evaluating the mortgage in question at \$43,000.00".

6. At the hearing held herein, petitioners produced creditable evidence in the form of expert testimony to substantiate that the fair market value of

the second mortgage note was \$43,000.00.

7. Petitioners tendered no argument or evidence to refute the section 615(c)(4) modification for allocable expenses or the minimum income tax on items of tax preference.

CONCLUSIONS OF LAW

A. That petitioner Laura Moss may use the fair market value of the second mortgage of \$43,000.00 to determine any long-term capital gain that she may have.

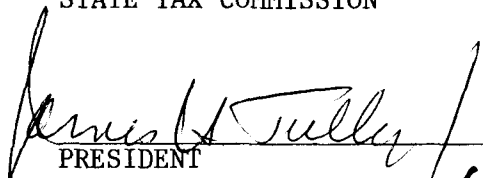
B. That the section 615(c)(4) modification for allocable expenses and the minimum income tax have been properly asserted; however, they must be recomputed pursuant to the reduced long-term capital gain provided for in Conclusion of Law "A", supra.

C. That the Audit Division is directed to recompute the Notice of Deficiency based on Conclusions of Law "A" and "B"; that the recomputed deficiency is to be reduced by the overpayment due the husband; and that, except as so granted, the petition and claim for refund are denied and the Notice of Deficiency against petitioners issued April 12, 1976 is sustained.

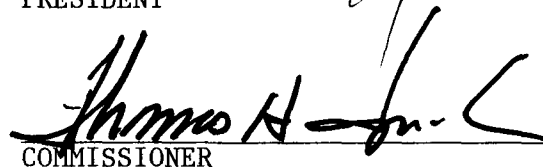
DATED: Albany, New York

JUL 07 1980

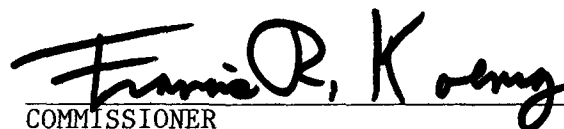
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER