

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Pearl Rubin :
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 - 1974. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Pearl Rubin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Pearl Rubin
140-22 Debs Pl. Apt. 22-A
Bronx, NY 10475

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
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Pearl Rubin :
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 - 1974. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Victor Nerfin 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. Victor Nerfin
3155 Grand Concourse
Bronx, NY 10468

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 June, 1980.

Joanne Knapp

J. J. Kelly

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

June 20, 1980

Pearl Rubin
140-22 Debs Pl. Apt. 22-A
Bronx, NY 10475

Dear Ms. Rubin:

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
Victor Nerfin
3155 Grand Concourse
Bronx, NY 10468
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PEARL RUBIN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1971, 1972, 1973 and 1974.

Petitioner Pearl Rubin, 140-22 Debs Place, Apt. 22-A, Bronx, New York 10475, 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, 1972, 1973 and 1974 (File No. 15188).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 19, 1979 at 1:15 P.M. Petitioner appeared by Victor Nerfin, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner properly computed a net operating loss for 1974, and if so, was such loss properly carried back to 1971, 1972 and 1973.

FINDINGS OF FACT

1. Petitioner, Pearl Rubin, timely filed New York State income tax resident returns for 1971 through 1973. On April 5, 1975, petitioner filed a New York State Income Tax Resident Return for 1974 along with amended returns for 1971 through 1973. In 1974, petitioner incurred an operating loss of \$4,764.63 which resulted from a foreclosure proceeding on income property owned by petitioner. Petitioner claimed \$1,764.63 of the loss on her 1974 return and carried back \$1,000.00 on each of the amended returns. The amended returns filed for 1971 through 1973 showed overpayments of \$26.10, \$30.75 and \$30.00, respectively.

2. On June 2, 1976, the Audit Division issued a Statement of Refund Adjustment to petitioner which computed a net operating loss for 1974 of \$785.63 by reducing petitioner's total income by the entire amount of the operating loss (\$4,764.63). The net operating loss (\$785.63) was carried back to 1971, which resulted in an adjusted refund due of \$20.50. Accordingly, on June 2, 1976, a notice of disallowance was issued to petitioner indicating that \$5.60 of her 1971 refund was disallowed.

On June 28, 1976, a notice of disallowance was issued to petitioner which disallowed her claim in full for 1972 and 1973 on the grounds that a net operating loss must first be carried back to the third preceding tax year and only the remaining balance is available for carryback to the second and first preceding taxable years. Since the 1974 net operating loss was entirely absorbed in 1971, there was no carryback deduction available for the other years.

3. The Audit Division stipulated that petitioner erroneously paid personal income taxes of \$15.20 in 1974 due to the net operating loss and thereby is entitled to a refund.

4. Petitioner filed amended United States individual income tax returns for 1971 through 1973 and contended that such returns were prepared based on instructions given her by the Internal Revenue Service. Petitioner received a refund in each of the years from the Internal Revenue Service and thus concluded that the IRS accepted her method of deducting the operating loss, and accordingly, such method should be accepted by New York State.

CONCLUSIONS OF LAW

A. That petitioner, Pearl Rubin, incurred an operating loss in 1974; that the entire amount of such loss must be deducted in the year in which the loss occurred, in accordance with the provisions of section 461(a) of the Internal Revenue Code; That petitioner incorrectly allocated the 1974 operating loss over a three year period rather than computing a net operating loss for 1974.

B. That a net operating loss occurs when total allowable deductions are greater than gross income for the year within the meaning of section 172(c) of the Internal Revenue Code. The statement of Refund Adjustment referred to in Finding of Fact "2" accurately reflects petitioner's net operating loss for 1974 and properly carried back said loss to 1971.

C. That the State Tax Commission is not required to accept as correct any Federal change in taxable income pursuant to 20 NYCRR 153.4.

D. That the petition of Pearl Rubin is granted to the extent that petitioner is entitled to a refund of \$15.20 for 1974, in accordance with Finding of Fact "3"; and that except as so granted, the petition is in all other respects denied and the notices of refund disallowance issued June 2, 1976 and June 28, 1976 are sustained.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER