

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Henry & Vivian Shalom :

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 1970. :

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Henry & Vivian Shalom, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

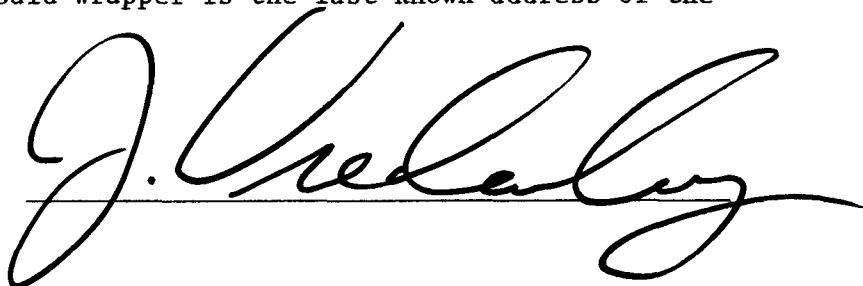
Henry & Vivian Shalom
411 5th Ave.
New York, NY 10016

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
5th day of September, 1980.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Henry & Vivian Shalom :
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 1970. :

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Isaac H. Friedman 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. Isaac H. Friedman
Cohen & Friedman, CPA's
25 W. 43rd St.
New York, NY 10036

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
5th day of September, 1980.

Debbie Bank

J. Vredenburg

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

September 5, 1980

Henry & Vivian Shalom
411 5th Ave.
New York, NY 10016

Dear Mr. & Mrs. Shalom:

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
Isaac H. Friedman
Cohen & Friedman, CPA's
25 W. 43rd St.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HENRY SHALOM and VIVIAN SHALOM	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioners, Henry Shalom and Vivian Shalom, 411 Fifth Avenue, New York, New York 10016, 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 1970 (File No. 13638).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 28, 1978. Petitioners appeared by Isaac H. Friedman, CPA. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency was issued within the statutory period of limitation on assessment.

II. Whether section 615(c)(4) of the Tax Law, providing for a modification reducing Federal itemized deductions by allocable expenses attributable to items of tax preference, violates the constitution of the State of New York.

FINDINGS OF FACT

1. Petitioners, Henry Shalom and Vivian Shalom, filed a joint New York State Income Tax Resident Return for 1970.

2. On April 12, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners in the amount of \$3,160.62 in additional tax, plus interest.

The deficiency was based on petitioners' failure to allow for a modification for allocable expenses attributable to items of tax preference in excess of the specific deduction as required by section 615(c)(4) of the Tax Law.

3. The item of tax preference was comprised of \$63,993.00 in excess investment interest. The allocable expenses were \$5,634.83 in taxes (\$9,184.83 total, less \$3,550.00 State and local income taxes), \$1,075.00 in contributions and \$128,686.18 in interest. Of the interest, \$128,053.31 had been paid to one creditor, Israel Discount Bank, Ltd. The record does not reveal the purpose of the loan or loans on which interest was paid to Israel Discount Bank, Ltd.

4. Petitioners contended:

(a) that the deficiency was not timely, since it was received after the expiration of the three-year period of limitation on assessment; and

(b) that the modification reducing total Federal itemized deductions by the allocable expenses attributable to items of tax preference (as defined in section 623(a) of the Tax Law) contained in section 615(c)(4) of the Tax Law, violates the constitution of the State of New York.

CONCLUSIONS OF LAW

A. That petitioners, Henry Shalom and Vivian Shalom, have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the Notice of Deficiency was not mailed on April 12, 1974. Mailing of the Notice of Deficiency on said date constituted timely notice under sections 681(b), 682(a) and 683 of the Tax Law.

B. That the constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. The Commission has no authority to declare such laws unconstitutional.

C. That during the year at issue, section 615(c) of the Tax Law provided in part as follows:

"(c) Modifications reducing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

* * *

(4) the deductions for allocable expenses attributable to items of tax preference, as defined in subsection (a) of section six hundred twenty-three, if the sum of the items of tax preference of the taxpayer for the taxable year, as defined in subsection (b) of section six hundred twenty-two, exceeds the applicable specific deduction described in subsection (c) of such section."

Section 623 of the Tax Law provided in part:

"(a) In the case of resident individuals, the deductions for allocable expenses attributable to items of tax preference is the total of the deductions for allocable expenses, as defined in subsection (b) of this section, reduced by an amount which equals the total of such deductions, as defined in such subsection, multiplied by a fraction, the numerator of which is the taxpayer's New York adjusted gross income for the taxable year and the denominator of which is the taxpayer's New York adjusted gross income for the taxable year plus the sum of the items of tax preference of the taxpayer for the taxable year, as defined in subsection (b) of section six hundred twenty-two, reduced by the specific deduction described in subsection (c) of such section."

Section 622 of the Tax Law provided in part:

"(b) For purposes of this article, the term 'items of tax preference' shall mean the federal items of tax preference, as defined in the laws of the United States, of a resident individual, estate or trust, as the case may be, for the taxable year, with the following modifications --

(1) excess investment interest shall be computed as if the modifications described in paragraphs one and two of subsection (b) of section six hundred twelve, paragraphs one, two and six of subsection (c) of such section and paragraphs three of subsections (c) and (d) of section six hundred fifteen were required to be made in determining net investment income, and the modifications described in paragraphs two of subsections (c) and (d) of section six hundred fifteen were required to be made in determining investment interest expense, provided, however, that such modifications shall be applicable only to the extent that the items of income or deduction covered thereby were not derived from the conduct of a trade or business."

Accordingly, petitioners were required to allow for a modification for allocable expenses attributable to items of tax preference in excess of

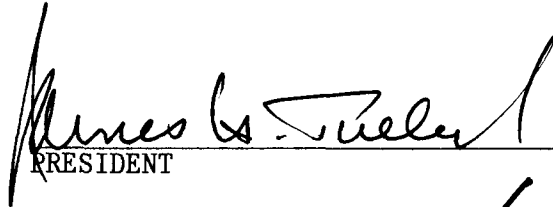
the specific deduction.

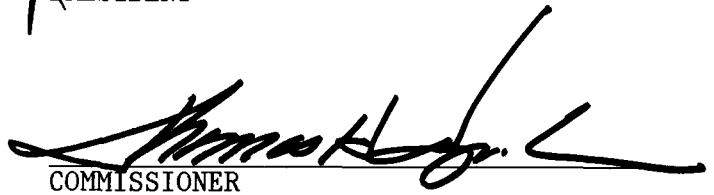
D. That the petition of Henry Shalom and Vivian Shalom is denied and the Notice of Deficiency issued April 12, 1974 is sustained.


DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER