

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Pauline G. Snyder :

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 1973. :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Pauline G. Snyder, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Pauline G. Snyder  
80 Riverside Dr. Apt. 95  
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  
21st day of March, 1980.

Joanne Knapp

J. Vredenburg

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

March 21, 1980

Pauline G. Snyder  
80 Riverside Dr. Apt. 95  
New York, NY 10024

Dear Ms. Snyder:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
PAULINE G. SNYDER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

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Petitioner, Pauline G. Snyder, 80 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 1973 (File No. 15714).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 8, 1979 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (A. Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioner is liable for a deficiency resulting from preparer's negligence.

II. Whether the minimum income tax and modification for allocable expenses were properly computed by the Audit Division for 1973.

FINDINGS OF FACT

1. Petitioner Pauline G. Snyder timely filed a New York State Income Tax Resident Return for 1973, in which she reported a long-term capital gain from the sale of stock.

2. On June 28, 1976, the Audit Division issued a Notice of Deficiency in the sum of \$346.66 for 1973, along with an explanatory statement of audit changes, which stated:

"The remainder of Long Term Capital Gains not subject to New York Personal Income Tax is considered to be an Item of Tax Preference and subject to New York Minimum Income Tax."

"To arrive at New York itemized deductions, Section 615(c)(4) of the State Tax Law requires that a modification must be made for allocable expenses attributable to items of tax preference in excess of the specific deduction."

3. Petitioner realized a net gain of \$23,130.00 from the sale of stock for 1973. In addition, she incurred allocable expenses in the sum of \$6,410.00, which were included in the total New York itemized deductions reported on her New York return.

4. Petitioner contended that the deficiency resulted from the negligence of her tax preparer; accordingly, he should be deemed liable for tax now due.

#### CONCLUSIONS OF LAW

A. That regardless of who prepared petitioner's tax returns, the ultimate responsibility for the filing of a tax return, as well as the payment of any tax liability, is upon the petitioner in accordance with the meaning and intent of section 651 of the Tax Law and 20 NYCRR 145.1.

B. That a long-term capital gain deduction is an item of tax preference subject to the minimum income tax in accordance with the meaning and intent of section 57(a)(9)(A) of the Internal Revenue Code and section 622 of the Tax Law.

C. That the modifications pursuant to sections 612(b)(11) and 615(c)(4) of the Tax Law were properly applied.

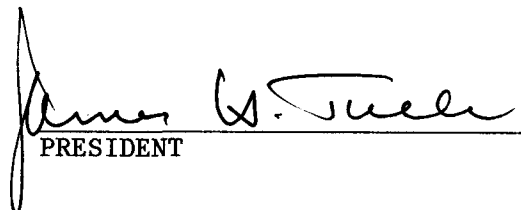
D. That the petition of Pauline G. Snyder is denied and the Notice of

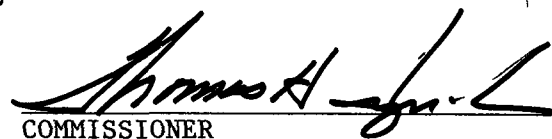
Deficiency issued June 28, 1976 in the sum of \$346.66 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

**MAR 21 1980**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER