

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard A. & Irene S. Adrian :
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 :
1967. :

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 9th day of October, 1981, he served the within notice of Decision by certified mail upon Richard A. & Irene S. Adrian, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard A. & Irene S. Adrian
201 East 79th St.
New York, NY 10021

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
9th day of October, 1981.

Constance A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard A. & Irene S. Adrian :
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 :
1967.

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 9th day of October, 1981, he served the within notice of Decision by certified mail upon Bertram Gezelter the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bertram Gezelter
Biller & Snyder
75 Maiden Lane
New York, NY 10038

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
9th day of October, 1981.

Connie C. Hagelund

J. Vredenburg

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

October 9, 1871

Richard A. & Irene S. Adrian
201 East 79th St.
New York, NY 10021

Dear Mr. & Mrs. Adrian:

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
Bertram Gezelter
Biller & Snyder
75 Maiden Lane
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RICHARD A. ADRIAN and IRENE S. ADRIAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1967.

DECISION

Petitioners, Richard A. Adrian and Irene S. Adrian, 201 East 79th Street, New York, New York 10021, 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 1967 (File No. 01006).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1977. The petitioners appeared by Bertram Gezelter of Biller & Snyder, CPA's. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether for New York State income tax purposes petitioners may compute a net operating loss and a net operating loss carryback deduction which includes the addition and subtraction modifications required by sections 612 and 615 of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Richard A. Adrian and Irene S. Adrian, filed New York State income tax resident returns for 1967 and 1970. On said returns petitioners reported addition and subtraction modifications required by sections 612 and 615 of the Tax Law.

2. On March 15, 1971 petitioners filed a claim for refund of personal income tax paid for the year 1967. An amended claim increasing the amount of refund claimed was filed on May 21, 1971. This claim was allowed to the extent of \$3,992.30 and disallowed to the extent of \$2,548.80 by an Audit Division letter dated September 16, 1971. On November 29, 1971 the Audit Division sent to petitioners a Notice of Disallowance based on the aforementioned letter.

3. Petitioner Richard A. Adrian, in 1970, was a general partner of Shaw & Adrian, at 40 Wall Street in New York City, a firm which acted as designated specialist in certain securities listed on the New York Stock Exchange. Shaw & Adrian sustained a substantial loss in 1970 and Mr. Adrian reported his distributive share of that loss on petitioners' Federal and New York income tax returns.

4. For 1970 petitioners computed for Federal income tax purposes a net operating loss of \$38,625.00. Said loss was computed with the modifications specified in section 172(d) of the Internal Revenue Code. Based on an additional business loss of \$1,298.00, the net operating loss was increased to \$39,923.00. Petitioners carried back the 1970 net operating loss to 1967 and they filed claims for refund with the Internal Revenue Service. Since petitioners' Federal adjusted gross income for 1967 was \$107,735.00 and their taxable income was \$84,745.00, the net operating loss carryback deduction was fully absorbed. The computation of the 1967 Federal net operating loss carryback deduction is not in dispute.

5. For New York State income tax purposes petitioners computed for 1970 a net operating loss of \$64,113.00. Said loss was computed in the same manner as the Federal net operating loss except the modifications required by sections 612 and 615 of the Tax Law were included in the computation. They carried back

the 1970 net operating loss to 1967 and they filed claims for refunds, (see Finding of Fact "2", supra). For 1967 petitioners' total New York income was \$117,453.00 and their taxable income was \$105,812.00 because of the modifications required by sections 612 and 615 of the Tax Law. The Audit Division limited the 1967 net operating loss deduction to \$39,923.00, since this was the amount allowed by the Internal Revenue Service.

6. Petitioners contended that a different net operating loss computation should be made for New York income tax purposes, since they were required to report the addition and subtraction modifications of section 612 and 615 of the Tax Law. They argued that the Audit Division had no authority to limit the net operating loss deduction to the amount allowed by the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That the computation of a net operating loss is not controlled by the amount of loss shown on the New York State income tax return of the loss year. In the absence of any provisions in the Tax Law for a computation of a net operating loss, the provisions of the Internal Revenue Code control the computation of any net operating loss. Section 172 of the Internal Revenue Code provides for the computation of a net operating loss, and a net operating loss carryback deduction. Said section does not provide for the modifications required by sections 612 and 615 of the Tax Law. Therefore, petitioners cannot determine a net operating loss or claim a deduction for such loss in a manner different from that provided in section 172 of the Internal Revenue Code. (See Matter of Sheils et. al. v. State Tax Commission, 52 N.Y.2d 954, rev'g 72 A.D.2d 896.)

B. That the interpretation of a statute by the agency charged with the statute's enforcement is entitled to great weight (Matter of Howard V. Wyman, 28 N.Y.2d 434, 322 N.Y.S.2d 683). Tax deductions and exemptions depend upon

clear statutory provisions and the burden is upon the taxpayer to establish a right to them (Matter of Grace v. State Tax Commission, 37 N.Y.2d 193, 371 N.Y.S. 715). Petitioners have not shown upon a clear statutory provision that they are entitled to a net operating loss deduction greater than that allowed by the Audit Division. (Petition of James H. Sheils and Margaret L. Sheils, supra; Petition of David Berg, State Tax Commission, April 17, 1981).

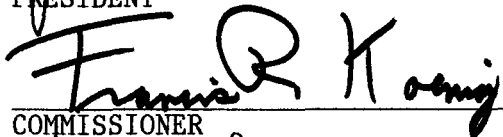
C. That the petition of Richard A. Adrian and Irene S. Adrian is denied and the Notice of Disallowance dated November 29, 1971 is sustained.

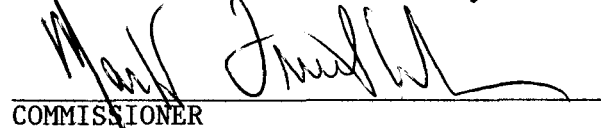
DATED: Albany, New York

OCT 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

October 9, 1871

Richard A. & Irene S. Adrian
201 East 79th St.
New York, NY 10021

Dear Mr. & Mrs. Adrian:

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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
Bertram Gezelter
Biller & Snyder
75 Maiden Lane
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD A. ADRIAN and IRENE S. ADRIAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1967.	:	

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A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1977. The petitioners appeared by Bertram Gezelter of Biller & Snyder, CPA's. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether for New York State income tax purposes petitioners may compute a net operating loss and a net operating loss carryback deduction which includes the addition and subtraction modifications required by sections 612 and 615 of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Richard A. Adrian and Irene S. Adrian, filed New York State income tax resident returns for 1967 and 1970. On said returns petitioners reported addition and subtraction modifications required by sections 612 and 615 of the Tax Law.

2. On March 15, 1971 petitioners filed a claim for refund of personal income tax paid for the year 1967. An amended claim increasing the amount of refund claimed was filed on May 21, 1971. This claim was allowed to the extent of \$3,992.30 and disallowed to the extent of \$2,548.80 by an Audit Division letter dated September 16, 1971. On November 29, 1971 the Audit Division sent to petitioners a Notice of Disallowance based on the aforementioned letter.

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6. Petitioners contended that a different net operating loss computation should be made for New York income tax purposes, since they were required to report the addition and subtraction modifications of section 612 and 615 of the Tax Law. They argued that the Audit Division had no authority to limit the net operating loss deduction to the amount allowed by the Internal Revenue Service.

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B. That the interpretation of a statute by the agency charged with the statute's enforcement is entitled to great weight (Matter of Howard V. Wyman, 28 N.Y.2d 434, 322 N.Y.S.2d 683). Tax deductions and exemptions depend upon

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C. That the petition of Richard A. Adrian and Irene S. Adrian is denied and the Notice of Disallowance dated November 29, 1971 is sustained.

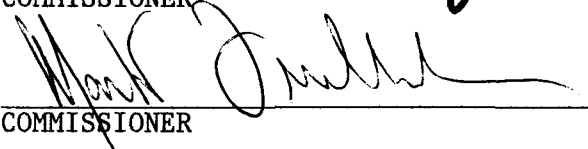
DATED: Albany, New York

OCT 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Handwritten: 11/1/79
Handwritten: EMB

Handwritten: B/A
Handwritten: Alex

Richard A. & Irene S. Adrian
201 East 79th St.
New York, NY 10021

Handwritten: VLS

Stamp: FILED
Stamp: CASE INTX

TAX APPEALS BUREAU
OCT 28 1981
FILED

COMMUNICATIONS SECTION
NOV 11 1981
MAIL ROOM