

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jerrold M. & Rae Becker :
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 1973, 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 6th day of March, 1981, he served the within notice of Decision by certified mail upon Jerrold M. & Rae Becker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

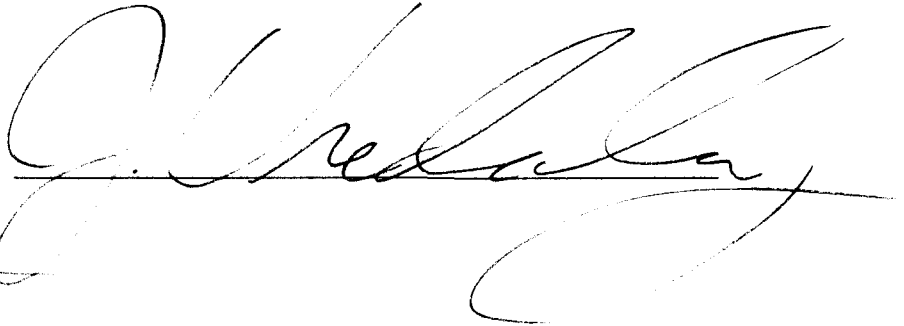
Jerrold M. & Rae Becker
36 Old Field La.
Great Neck, NY 11040

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
6th day of March, 1981.


Anna D. Hogeland



STATE OF NEW YORK
STATE TAX COMMISSION

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of
Jerrold M. & Rae Becker :
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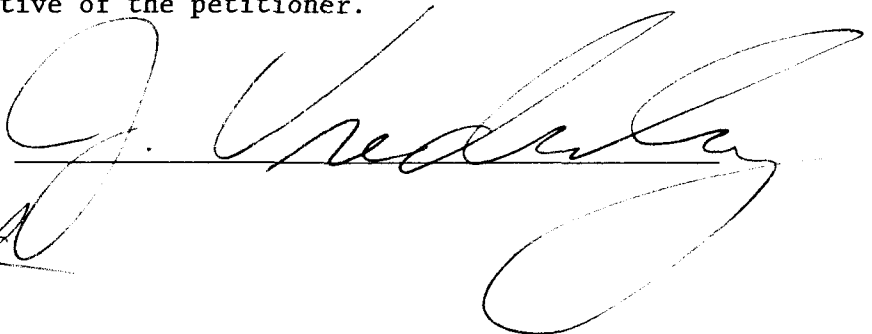
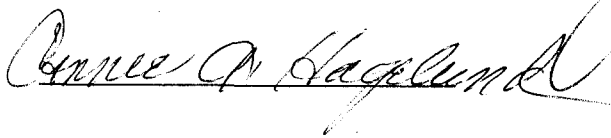
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of March, 1981, he served the within notice of Decision by certified mail upon Henry M. Burger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Henry M. Burger
Hoffberg, Oberfest & Burger
888 Seventh Ave.
New York, NY 10019

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
6th day of March, 1981.

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

March 6, 1981

Jerrold M. & Rae Becker
36 Old Field La.
Great Neck, NY 11040

Dear Mr. & Mrs. Becker:

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
Henry M. Burger
Hoffberg, Oberfest & Burger
888 Seventh Ave.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JERROLD M. BECKER and RAE BECKER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973 and 1974.	:	

Petitioners, Jerrold M. Becker and Rae Becker, 36 Old Field Lane, Great Neck, New York 11040, 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 1973 and 1974 (File No. 18671).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1979 at 11:00 A.M. Petitioners appeared by Henry M. Burger, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners were entitled to the new Federal limits, effective for tax years beginning after December 31, 1973, on the amounts deductible by self-employed persons for contributions to qualified plans for 1973 and 1974.

FINDINGS OF FACT

1. On February 28, 1977, the Audit Division issued a Notice of Deficiency to petitioners, Jerrold M. and Rae Becker, indicating a deficiency of \$3,420.07, plus interest, for 1973 and 1974. Petitioners had a tax deficiency for 1973 of \$2,612.92, and for 1974 of \$807.15.

2. At the formal hearing, petitioners' representative stated that petitioners were not contesting the 1973 deficiency, but only the 1974 deficiency.

3. Petitioners filed form IT-201, New York State Income Tax Resident Return, on a calendar year basis for 1974.

4. BSK Pediatric Surgical Association ("BSK") is a professional service corporation. Petitioner Jerrold Becker was a medical doctor and shareholder in BSK. This professional service corporation filed a New York State Professional Service Corporation Information Return (Form IT-2102.1) for the taxable year ended October 31, 1973, and also for the taxable year ended October 31, 1974.

5. For the taxable periods beginning November 1, 1973 and ending October 31, 1974, and beginning November 1, 1974 and ending October 31, 1975, BSK filed New York State Corporation Franchise Tax Reports pursuant to Article 9A of the Tax Law.

6. The Notice of Deficiency issued by the Audit Division on February 28, 1977, showed the following explanation:

"The amount that would be allowed by a self-employed individual for corporations whose fiscal year began before January 1, 1974 is the lesser of 10% of earned income or \$2,500.00. If the corporation's fiscal year began after December 31, 1973, the amount is the lesser of 15% of earned income or \$7,500.00."

CONCLUSIONS OF LAW

A. That for taxable years beginning after December 31, 1973, the Federal limits on the amounts deductible by self-employed persons for contributions to qualified plans were increased to the lesser of \$7,500 or 15% of earned income, from the previous limits of \$2,500, or 10% of earned income.

B. That Official Employee Retirement Income Security Act Guidelines state as follows:

"Question: A partnership, whose taxable year ends on June 30, maintains an H.R. 10 plan covering its partners and common-law employees. The taxable year of each partner is the calendar year. When does the new \$7500-15% contribution limit for H.R. 10 plans apply?"

Answer: The new limits apply for taxable years of the partnership beginning after December 31, 1973 (see Revenue Ruling 68-138, 1968-1 C.B. 183). Therefore, the new limits are not available to the partnership or its partners for the partnership's taxable year beginning before and ending after December 31, 1973. The effective date of the new rules is determined without regard to the taxable year of a partner. For example, if the partnership's taxable year is a fiscal year beginning on February 1 and ending on January 31, the new contribution limit applies with respect to the fiscal year ending January 31, 1975."

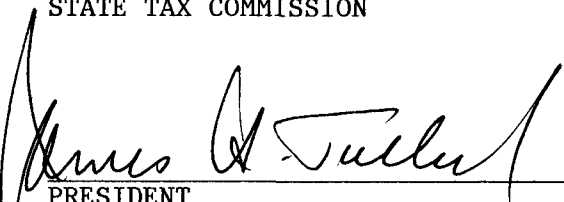
C. That consistent with this policy, when an employee shareholder is on a calendar year basis for 1974, and the professional service corporation is on a fiscal year basis ending in 1974, the Federal deduction limitation of the lesser of 10% of earned income or \$2,500 applies, rather than the Federal deduction limitation for taxable years beginning after December 31, 1973, providing for the lesser of 15% of the earned income or \$7,500.


D. That the petition of Jerrold M. Becker and Rae Becker is denied and the Notice of Deficiency dated February 28, 1977 is sustained.

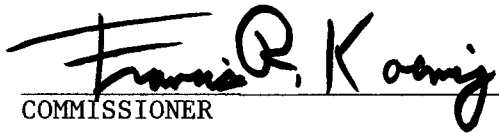
DATED: Albany, New York

MAR 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER