

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Rose Freedman :

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 1974. :

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 Rose Freedman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rose Freedman
2 Washington Sq.
Larchmont, NY 10538

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.

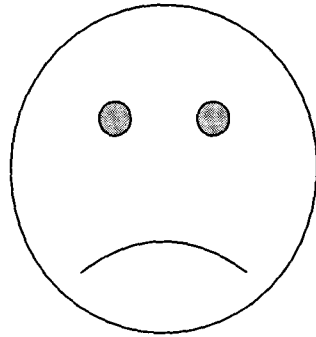
That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of March, 1981.

Conce P. Haglund

Jay Vredenburg

**CORRECTION
FOLLOWS**



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2 Washington Sq.
Larchmont, NY 10538

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.

Conce P. Haglund

Jay Vredenburg

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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 George M. Freedman 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. George M. Freedman
Glick-Freedman
271 North Ave.
New Rochelle, NY 10801

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.

Connee P. Haglund

J. Vredenburg

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

March 6, 1981

Rose Freedman
2 Washington Sq.
Larchmont, NY 10538

Dear Ms. Freedman:

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
George M. Freedman
Glick-Freedman
271 North Ave.
New Rochelle, NY 10801
Taxing Bureau's Representative

STATE TAX COMMISSION

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 July 22, 1980 at 10:45 A.M. Petitioner appeared by George M. Freedman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the adjusted basis of securities sold in 1974 was higher for New York State personal income tax purposes than for Federal income tax purposes.

FINDINGS OF FACT

1. Petitioner, Rose F. Freedman, timely filed a New York State Combined Income Tax Return for the year 1974, on which she reported a capital gain of \$34,047.00.

2. On April 10, 1978, the Audit Division issued a Notice of Deficiency for \$2,278.94, plus interest of \$578.48, for the year 1974, along with an explanatory Statement of Audit Changes which indicated, in part:

"Under New York Tax Law, cost basis of stock sold is the same as Federal cost basis (Fair Market Value as of December 31, 1959, is immaterial). You have not demonstrated that the "higher basis" modification - Section 612(c)(4) - is applicable. Your Line 5 on Schedule A has been adjusted by \$10,490.00 to agree with the Federal amount claimed."

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

"Net Long Term Capital Gains are taxed by New York State at 60% rather than 50%."

"Because of the increase in the Modification for allocable expenses (\$30.00), your remaining allowable itemized deduction (\$1,974.00) are less than the standard deduction; the standard deduction is allowed in lieu of itemized deduction claimed."

The sole issue raised by petitioner was that she was entitled to a higher basis for the stock sold based on its fair market value as of December 31, 1959.

3. Petitioner, Rose F. Freedman, sold securities during the year 1974 that were acquired prior to December 31, 1959. In computing the capital gain for Federal income tax purposes, petitioner used the adjusted cost basis of the stock sold; whereas in computing the capital gain for New York State personal income tax purposes, petitioner used the fair market value of the stock sold as of December 31, 1959 and cited section 612(c)(4) of the Tax Law as justification for the higher basis.

4. Petitioner did not submit any evidence indicating that the securities sold during the year 1974 had acquired a higher adjusted basis pursuant to Article 16 of the Tax Law.

CONCLUSIONS OF LAW

A. That section 612(c) (4) of the Tax Law provides a subtraction modification (for determining the New York adjusted gross income of a resident individual) as follows:

"The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for New York income tax purposes than for federal income tax purposes on the last day of the last taxable year for which article sixteen imposes tax, that does not exceed such difference in basis; but if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to sixty per centum of such portion of gain."

B. That section 612(c) (4) of the Tax Law does not provide for the automatic application of a higher adjusted basis solely due to the acquisition of securities purchased prior to the last day of the last taxable year for which Article 16 of the Tax Law imposed a tax.

C. That section 612(c) (4) of the Tax Law is solely applicable where property acquired a higher basis pursuant to provisions contained within Article 16 of the Tax Law.

D. That petitioner, Rose F. Freedman, has failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that the securities sold during the year 1974 had acquired a higher adjusted basis under Article 16 of the Tax Law than the adjusted basis reported for Federal income tax purposes.

E. That the petition of Rose F. Freedman is denied and the Notice of Deficiency issued April 10, 1978 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

MAR 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER