

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jerome L. Greene :
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 :
1972.

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Jerome L. Greene, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerome L. Greene
c/o Howard J. Rothman
430 Park Ave.
New York, NY 10022

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
2nd day of October, 1981.

Gennie P. Hagan

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jerome L. Greene :

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 :
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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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Howard J. Rothman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard J. Rothman
Marshall, Bratter, Greene, Allison & Tucker
430 Park Ave.
New York, NY 10022

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
2nd day of October, 1981.

Cornelia P. Hagellund

J. Vredenburg

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

October 2, 1981

Jerome L. Greene
c/o Howard J. Rothman
430 Park Ave.
New York, NY 10022

Dear Mr. Greene:

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,
Kathy Pflaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
Howard J. Rothman
Marshall, Bratter, Greene, Allison & Tucker
430 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JEROME L. GREENE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1972.	:	

Jerome L. Greene, c/o Maurice Singer & Co., 60 Corporate Park Drive, White Plains, New York 10604, 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 1972 (File No. 16290).

Petitioner has requested that this matter be submitted to the State Tax Commission for a decision without the necessity of a formal hearing, based on the record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether the 20 percent modification required by section 612(b)(11) of the Tax Law was properly excluded by petitioner in the year to which a net operating loss deduction had been carried back and the deduction for long-term capital gains provided by section 1202 of the Internal Revenue Code was not allowed by section 172(b)(2)(A) of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioner, Jerome L. Greene, filed resident personal income tax returns for 1972, 1973 and 1974.

2. Petitioner sustained a net operating loss for 1974 which he carried back to 1972. Petitioner initially carried the 1974 net operating loss back to 1971. Since none of the net operating loss carryback was absorbed in 1971, the entire amount carried forward to 1972.

3. On July 31, 1975, petitioner claimed a refund for 1972 of \$32,586.00, based on the 1974 net operating loss which was available to be carried back to the year 1972.

4. On October 31, 1975, the Income Tax Bureau issued a voucher to petitioner, Jerome L. Greene, for income tax refunds for 1972 and 1973. The refund for 1973 is not at issue. The refund for 1972 was granted only to the extent of \$26,918.00.

5. On December 11, 1975, the Income Tax Bureau issued a Notice of Disallowance to petitioner, Jerome L. Greene, for the portion of the refunds disallowed for 1972 and 1973. Petitioner timely filed a petition for a refund for 1972 in the amount of \$3,381.00.

6. Petitioner, Jerome L. Greene, reported for 1972 Federal adjusted gross income of \$458,821.00 before the deduction of the net operating loss carryback from 1974 to 1972. In determining Federal adjusted gross income of \$458,821.00, petitioner deducted from gross income 50 percent of the long-term capital gains as provided by section 1202 of the Internal Revenue Code. In computing total New York income for 1972 petitioner added to his Federal adjusted gross income pursuant to section 612(b)(11) of the Tax Law, 20 percent of the 50 percent long-term capital gain deductions taken pursuant to section 1202 of the Internal Revenue Code.

7. Since the net operating loss carryback reduced his 1972 federal taxable income to zero and he was also not allowed the 50 percent long-term

capital gain deduction pursuant to section 172(b)(2)(A) of the Internal Revenue Code, Petitioner, Jerome L. Greene, contended that the 20% modification of the 50 percent long-term capital gains deduction, originally reported by him on his New York State income tax return, should now be excluded.

CONCLUSIONS OF LAW

A. 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). Petitioner, Jerome L. Green, has not shown upon a clear statutory provision that he is entitled to exclude the 20 percent modification required by section 612(b)(11) of the Tax Law.

B. The petition of Jerome L. Green is denied and the Notice of Disallowance dated December 11, 1975 is sustained.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER