

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Olga Knoepke

:

:

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

Olga Knoepke  
870 United Nations Plaza  
New York, NY 10017

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.

*Gunnar A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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

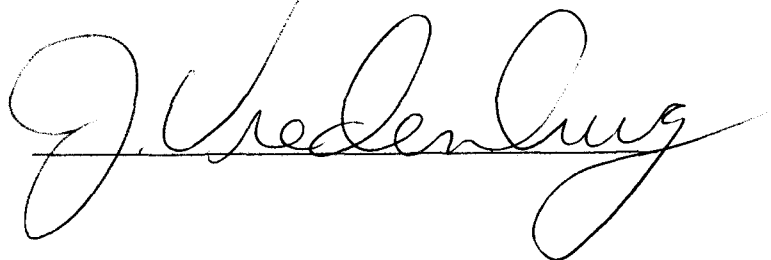
L. William Fishman  
Rosen & Reade  
666 Fifth Ave.  
New York, NY 10019

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  
2nd day of October, 1981.





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

October 2, 1981

Olga Knoepke  
870 United Nations Plaza  
New York, NY 10017

Dear Ms. Knoepke:

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 Pfaffenbach*

STATE TAX COMMISSION

cc: Petitioner's Representative  
L. William Fishman  
Rosen & Reade  
666 Fifth Ave.  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
OLGA KNOEPKE  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1974.

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DECISION

Petitioner, Olga Knoepke, 870 United Nations Plaza, New York, New York 10017, 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 1974 (File No. 25340).

On November 14, 1980, petitioner advised the State Tax Commission, in writing, that she desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

#### ISSUE

Whether petitioner is properly entitled to claim a capital loss carryforward in 1974 resulting from a capital loss deduction allowed in taxable year 1973 under the Federal Claim of Right Provision, where for Federal purposes petitioner elected to claim a credit for 1973 pursuant to section 1341(a)(5) of the Internal Revenue Code in lieu of such deduction.

#### FINDINGS OF FACT

1. Olga Knoepke (hereinafter petitioner) timely filed a New York State Income Tax Resident Return for the year 1974 whereon she reported a capital loss of \$1,000.00, although for Federal purposes she reported a net long-term capital gain of \$1,227.00.

2. On August 9, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein said capital loss was disallowed since the "Starting point for New York State adjusted gross income is Federal adjusted gross income". Additionally, said statement incorporated a 20 percent capital gain modification which was applied to petitioner's reported Federal net long-term capital gain. Accordingly, a Notice of Deficiency was issued against petitioner on April 12, 1978 asserting additional personal income tax of \$370.86, plus interest of \$94.22, for a total due of \$465.08.

3. In 1966 petitioner reported a capital gain from the liquidation of A.C.C. Limited. Subsequently, in 1973 the Internal Revenue Service asserted, and petitioner paid \$66,352.00. Said amount represented Federal income tax determined to be due from A.C.C. Limited, which was paid by petitioner as transferee of the corporate assets. Pursuant to Internal Revenue Code section 1341, petitioner claimed a tax credit in lieu of a capital loss deduction on her 1973 Federal income tax return. Inasmuch as New York State does not recognize the credit pursuant to section 1341, petitioner claimed a long-term capital loss on her 1973 New York State return.

4. For 1974, the year at issue, petitioner claimed a capital loss carryover and deducted the maximum allowable of \$1,000.00.

5. Petitioner contended that disallowance of the capital loss carryover in years subsequent to 1973 results in an extremely inequitable treatment whereby petitioner is denied full benefit of the 1973 deduction.

#### CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides, in pertinent part, that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States...."

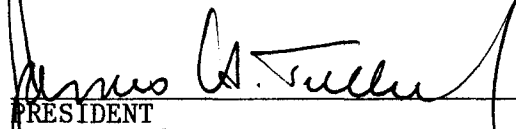
Since a capital loss carryover was not reported for Federal purposes in 1974, such carryover is not properly allowable for said year on petitioner's New York State return within the meaning and intent of section 612(a) of the Tax Law.


B. That the petition of Olga Knoepke is denied and the Notice of Deficiency dated April 12, 1978 is sustained, together with such additional interest as may be lawfully owing.

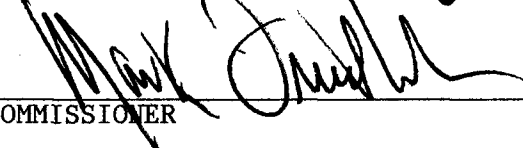
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER