

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Roslyn T. Lea :  
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 11th day of December, 1981, he served the within notice of Decision by certified mail upon Roslyn T. Lea, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

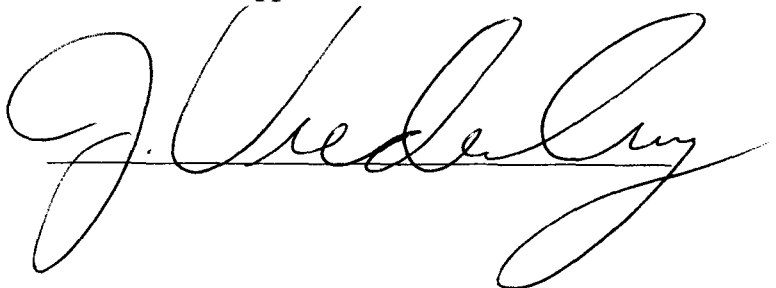
Roslyn T. Lea  
212 Woodside Dr.  
Hewlett, NY 11577

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  
11th day of December, 1981.

  
Annie A. Maguire

  
J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Roslyn T. Lea :  
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.

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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 11th day of December, 1981, he served the within notice of Decision by certified mail upon Nelson Leicht the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nelson Leicht  
H. J. Behrman & Co.  
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  
11th day of December, 1981.

*Connie A. Hayward*

*J. Vredenburg*

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

December 11, 1981

Roslyn T. Lea  
212 Woodside Dr.  
Hewlett, NY 11577

Dear Ms. Lea:

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  
Nelson Leicht  
H. J. Behrman & Co.  
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	:	
ROSLYN T. LEA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22 :		
of the Tax Law for the Year 1972.	:	

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Petitioner, Roslyn T. Lea, 212 Woodside Drive, Hewlett, New York 11577, 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. 26862).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 6, 1981 at 9:15 A.M. Petitioner Roslyn T. Lea appeared by H. J. Behrman and Company (Nelson Leicht). The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the amount of a net operating loss carryback deduction must be recomputed where petitioner determines her Federal income tax on a joint return with her husband but determines her New York State income taxes separately.

FINDINGS OF FACT

1. Petitioner, Roslyn T. Lea, filed a claim for refund of personal income tax in the amount of \$6,954.00 for 1972.

Petitioner's claim for refund (Form IT-113X) was based on a net operating loss carryback deduction of \$61,839.00 incurred by her in 1975 which she carried back in toto to 1972.

2. On December 18, 1978, the Audit Division partially disallowed the petitioner's claim by \$2,922.74 thereby reducing the refund to \$4,031.26. The Notice of Disallowance was based on a Voucher for Income Tax Refund issued against petitioner which limited the net operating loss carryback deduction to \$28,404.00 to conform with her Federal income tax filed on a joint return with her husband for 1972.

3. Petitioner for 1972 and 1975 filed her Federal income tax returns jointly with her husband, and elected to file her New York State income tax returns separately.

4. In 1975, petitioner incurred a net operating loss of \$61,839.00. The net operating loss allowed as a carryback deduction on her 1972 Federal income tax return filed jointly with her husband was limited to \$28,404.00. On her 1972 New York State income tax return, filed separately, petitioner claimed a net operating loss carryback deduction of \$61,839.00.

#### CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides 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 for the taxable year with the modifications specified in the section" (emphasis added).

Accordingly, the stating point in determining petitioner's New York income is petitioner's Federal adjusted gross income for the current year.

B. That section 612(f) of the Tax Law provides that:  
"If husband and wife determine their Federal income tax on a joint return but determine their New York income taxes separately, they shall determine their New York adjusted gross income separately as if their Federal adjusted gross incomes had been determined separately"

Accordingly, petitioners properly computed their New York adjusted gross separate incomes for 1975, the loss year.

C. That section 20 NYCRR 116.6(b) provides that:

"A net operating loss carry-back or carry-over results in a recomputation of Federal adjusted gross income for the prior of succeeding years. It therefore is reflected in New York adjusted gross income for the year involved. Where the husband and wife file separate New York State returns, the benefit of the net operating loss carry-back or carry-over may be claimed only by the spouse who sustained the loss".

The above section of the Personal Income Tax Regulations does not provide for a recomputation of a New York net operating loss deduction on a separate basis for the carryback year. (See Petition of David M. and Susan S. Hawkings, S.T.C. October 9, 1981)

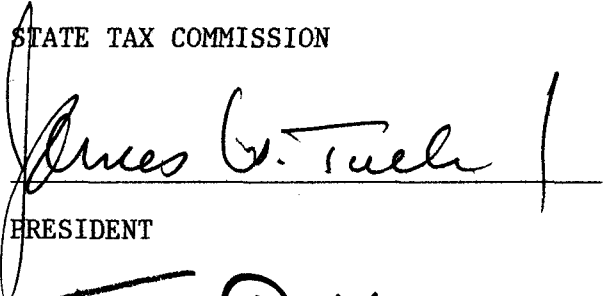
D. That the net operating loss allowed as a deduction in a carryback year is the deduction used in recomputing petitioner's Federal adjusted gross income for that year. (Matter of Shelby C. Davis and Kathryn W. Davis S.T..C. October 2, 1981) The Audit Division properly limited petitioner's net operating loss carryback deduction to \$28,404.00.

E. That the petition of Roslyn T. Lea is denied and the Notice of Disallowance dated December 18, 1978 is sustained.

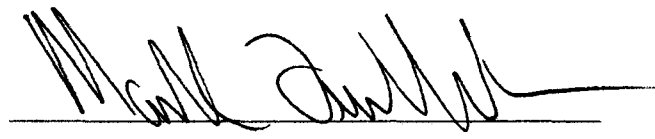
DATED: Albany, New York

DEC 11 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER