

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of William P. Lennon :
and Eileen P. Lennon, Indiv. & as Executrix :
: 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 :
1973. :

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Estate of William P. Lennon and Eileen P. Lennon, Indiv. & as Executrix the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

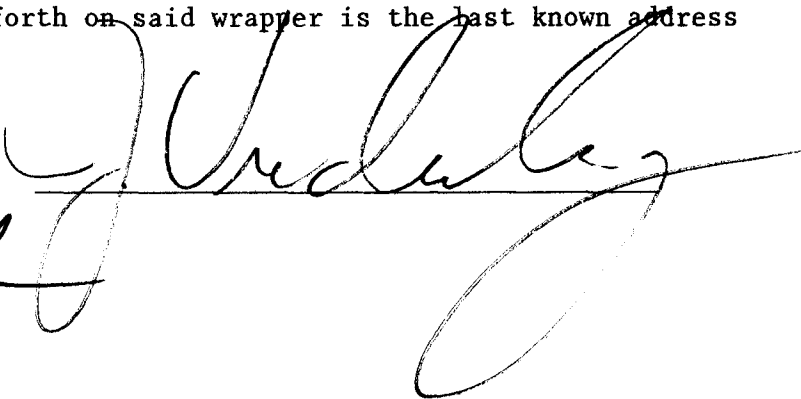
Estate of William P. Lennon
and Eileen P. Lennon, Indiv. & as Executrix
864A Heritage Village
Southbury, CT 06488

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
30th day of October, 1981.


Annie G. Hagelund


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of William P. Lennon :
and Eileen P. Lennon, Indiv. & as Executrix :
: 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 :
1973. :

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon William J. Rhatigan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William J. Rhatigan
112 Argyle Rd.
Stewart Manor, NY 11530

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
30th day of October, 1981.

Annice A. Hagelund

J. Vredenburg

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

October 30, 1981

Estate of William P. Lennon
and Eileen P. Lennon, Individ. & as Executrix
864A Heritage Village
Southbury, CT 06488

Dear Ms. Lennon:

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
William J. Rhatigan
112 Argyle Rd.
Stewart Manor, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THE ESTATE OF WILLIAM P. LENNON	:	DECISION
(EILEEN P. LENNON, Individually & as Executrix):	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

Eileen P. Lennon, 864 A Heritage Village, Southbury, Connecticut 06488, individually and as executrix of the Estate of William P. Lennon 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 1973 (File No. 19452).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1980. The petitioner appeared by William J. Rhatigan, CPA. The Audit Division appeared by Ralph Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners, who had made an installment sale of securities in July, 1972 and then in September, 1973 changed their residence from New York to another state, must, in order to avoid (pursuant to section 654(c)(4) of the Tax Law) a proposed assessment based upon an accrual of their total capital gain from the installment sale, post a bond or other security based on the amount of accrued items or whether the amount of the bond may be computed on the basis of installment gains to be reported on the returns which petitioner Eileen P. Lennon proposes to file for 1978 through 1985.

FINDINGS OF FACT

1. a. A Notice of Deficiency for personal income tax due for the year 1973 was issued on April 11, 1977 against the Estate of William P. Lennon, Eileen P. Lennon, Executrix and Eileen P. Lennon, individually. Said deficiency was in the amount of \$17,299.83 (personal income tax of \$15,771.83 and minimum income tax of \$2,808.60, less prepaid estimated tax of \$1,280.00), plus interest of \$3,878.10, for a total of \$21,177.93.

b. The deficiency was reduced after a conference held on April 8, 1980 to \$10,660.30, comprised of personal income tax of \$10,277.37 and minimum income tax of \$1,675.07, less tax previously stated of \$1,292.14. (This is computed without the inclusion of interest.)

2. William P. Lennon and his wife Eileen P. Lennon were domiciliaries and residents of New York State prior to September 30, 1973. On September 30, 1973, they moved to Southbury, Connecticut.

3. a. On July 27, 1972, prior to moving to Connecticut, Mr. and Mrs. Lennon sold 390 shares of stock of the Lennon-Peek Surgical Company, Inc.

b. The sale was an installment sale with final payment due in 1982. The petitioners chose to report this on their Federal income tax return as an installment sale.

c. Petitioners elected to report the gain on the sale of their stock on the installment basis for Federal income tax purposes. Said election was binding for New York State income tax purposes pursuant to 20 NYCRR 154.2.

d. The gross proceeds of the sale were \$247,500.00 and the reported gain was \$206,446.38, so that 83.413 percent of the said proceeds were taxable as a capital gain.

e. In 1972, petitioners had received proceeds of \$45,000.00.

f. In 1973, the year in issue, they received proceeds of \$9,700.88 so that the gain reportable in 1973 was therefore \$8,091.80.

g. Subsequent to 1973, they had an installment balance of \$192,799.12, of which 83.413 percent or \$160,820.31 would be capital gain includable in calculating taxable income to the extent of 50 percent thereof (\$80,410.15).

4. Mr. Lennon died on May 6, 1974.

5. Petitioners' Federal income tax return showed (as noted on the New York income tax return) a capital gain with respect to the sale of stock of \$8,091.80 and a capital gain deduction of one-half of this or \$4,045.90.

6. a. Petitioners filed a resident New York tax return for the short period January 1, 1973 through September 30, 1973. This was received late on August 18, 1975.

b. An amended resident return together with a non-resident return for the short period October 1 to December 31, 1973 was filed on December 19, 1975. Said returns showed that the capital gain of \$4,045.90 was "allocated" to the New York resident period in the amount of \$3,034.43, and to the non-resident period in the amount of \$1,011.47.

7. a. The deficiency for personal income tax was computed on the basis of income both as a resident and as a non-resident. Taxable income while a resident was found to be \$115,538.72, which includes \$3,034.43 as a capital gain and \$81,420.91 as an accrual. (The \$81,420.91 is \$1,011.47 from the last part of 1973, plus \$80,409.44 from the years after 1973.) Also included is \$16,891.07 as the adjustment requirement by section 612(b)(11) of the Tax Law of one-fifth of the federal net long term capital gain totaling \$84,455.35 (\$81,420.91 plus \$3,034.43) to reflect the fact that New York taxes capital

gains at 60 percent instead of 50 percent. Taxable income while a non-resident was found to be \$873.48, which includes \$1,011.47 as a capital gain and a reduction by \$1,011.47 as an "accrual".

b. The minimum income tax included in the determination is computed on items of tax preference of \$67,564.27, which is 40 percent and the balance remaining of \$168,911.38 after 1972 of the capital gain of \$206,446.38 from the sale of stock.

8. a. The deficiency, after reduction at the conference of April 8, 1980, is based upon taxable income as a resident of \$78,908.96 and as a non-resident of \$873.50. The taxable income as a resident shows a reduction of the accrual to \$53,971.88 or one-half of \$107,943.76 which is the amount of the balance of the capital gain due as of December 31, 1978. The capital gain modification required by section 612(b)(11) of the Tax Law is reduced to \$10,794.38 (one-fifth of \$53,971.90).

b. The minimum income tax is computed on items of tax preference of \$43,177.50 (40 percent of the balance of \$107,943.76 due on the capital gain as of December 1978).

9. a. As of the end of 1978 there was an installment balance due petitioners of \$129,407.88 on the sale. Of this amount, 83.413 percent, or \$107,942.99, constitutes capital gain includible in taxable income to the extent of 60 percent or \$64,765.74.

b. On this amount petitioner estimates a tax of \$2,317.00 is due to New York State for the years 1978 through 1985. This is computed by including each years installments in tax returns for the year in which received with applicable exemptions and computing a tax at 1977 rates.

c. Petitioner offered to immediately pay cash of \$2,317.00, to post a security bond in the amount of \$2,500.00 or to post a New York State bond in the amount of \$4,000.00 or \$5,000.00.

d. Petitioners' claim without challenge, that the payment of tax on the accrual basis or the filing of a bond for the amount of \$10,660.30 would be a great hardship to them because of limited cash resources and the existence of a tax on capital gains in Connecticut, their current state of residence.

CONCLUSIONS OF LAW

A. The regulations of the Commission (20 NYCRR 148.11(a)) make it clear that the amount of any bond required to be filed under section 654(c)(4) of the Tax Law must be based on the amount of accrued items under section 654(c)(1) of the Tax Law for the year of change in residence. In this case the amount of the bond must be at least \$10,660.30. Since such a bond has not been furnished, the tax in issue is proper and is due.

B. That the petition of the Estate of William P. Lennon and Eileen P. Lennon, individually and as executrix, is denied and the notice of deficiency is sustained.

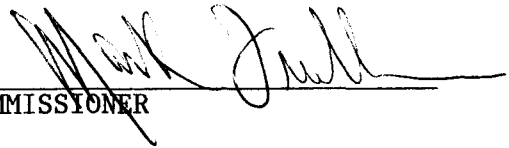
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER