

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carl F. Lomb Trust :

: 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 Years :
1973, 1974 and 1975 :

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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Carl Lomb Trust, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl F. Lomb Trust
c/o Lincoln First Bank of Rochester
P.O. Box 1412
Rochester, NY 14603

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
15th day of May, 1981.

Cornie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carl F. Lomb Trust :

: 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 Years 1973, 1974 & 1975

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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Sterling J. Weaver 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. Sterling J. Weaver
Nixon, Hargrave, Devans and Doyle
Lincoln First Tower
Rochester, NY 14603

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
15th day of May, 1981.

Ernie C. Hagelund

Jay Vredenburg

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

May 15, 1981

Carl F. Lomb Trust
c/o Lincoln First Bank of Rochester
P.O. Box 1412
Rochester, NY 14603

Gentlemen:

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
Sterling J. Weaver
Nixon, Hargrave, Devans and Doyle
Lincoln First Tower
Rochester, NY 14603
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CARL F. LOMB TRUST	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973, 1974 and 1975.	:	

Petitioner, Carl F. Lomb Trust, Lincoln First Bank of Rochester, Trustee, P.O. Box 1412, Rochester, New York 14603, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973, 1974 and 1975 (File No. 24366).

On September 14, 1979, petitioner advised the State Tax Commission, in writing, that he 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 the 20 percent long-term capital gain deduction modification, pursuant to section 612(b)(11) of the Tax Law, is applicable to that part of a trust's net long-term capital gains, which as required by the terms of the trust's governing instrument, are paid or set aside for charitable donation to organizations described in section 170(c)(2) of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioner, a New York State resident trust, created by the will of Carl F. Lomb, while a resident of New York State, timely filed New York State fiduciary returns for the years 1973, 1974 and 1975.

2. In computing New York taxable income on said returns, petitioner computed the 20 percent long-term capital gains deduction modification required

pursuant to section 612(b)(11) of the Tax Law, as incorporated by reference in section 618(4) of the Tax Law, by first reducing the net long-term capital gain deduction, pursuant to section 1202 of the Internal Revenue Code, by 50 percent of those net long-term capital gains which, by the terms of the governing instrument, were paid or set aside for charitable donation to organizations described in section 170(c)(2) of the Internal Revenue Code, then computing the section 612(b)(11) modification on the result thereof.

3. On December 1, 1976, the Audit Division issued a Statement of Audit Changes to petitioner wherein it held, and accordingly computed, that the section 612(b)(11) modification applies to the full long-term capital gain deduction. Petitioner paid the deficiency under protest, which was comprised of additional personal and minimum income tax of \$2,219.73.

4. On March 9, 1977, petitioner filed a claim for refund for each of the years at issue herein, contending that:

New York State allows the same exemption against taxation where charitable remainders are concerned, but its position is then inconsistent when it subjects the trust remainder to payment of tax based on a modification relating to capital gains.

The net effect is to penalize charitable remainder by the imposition of an additional tax on capital gains, whereas under Federal law, all capital gains attributable to a charitable share remain free of tax.

5. On March 9, 1978, the Audit Division issued a formal disallowance of petitioner's claim contending that:

As there is clearly a 1202 deduction for Long-Term Capital Gains as you indicated on your refund claim there is no provision in the New York State Tax Law that makes an exception for charitable contributions and the full 20 percent modification must be made on Long-Term Capital Gains in computing New York taxable income of the fiduciary.

6. Petitioner contended that it was not within the Legislature's intent to tax the charitable remainder of a trust when section 612(b)(11) became applicable to estates and trusts. In support of this contention, it submitted

the following:

(a) A letter from the Commissioner of Taxation and Finance to the Governor of the State of New York dated June 12, 1978, wherein he recommended executive approval of Senate Bill No. 7497, the purpose of which was to exclude from the modification required pursuant to section 612(b)(11), any net gains set aside by a trust or estate which are allowable as a deduction for charitable purposes in accordance with the provisions of section 642 of the Internal Revenue Code. Further, the Commissioner states in said letter that:

Taxing net capital gains of an estate or trust which are paid or set aside for a charitable purpose is inconsistent with Federal tax law and was not the intent of the State Legislature when the modification provided for under section 612(b)(11) was made applicable to estates or trusts.

(b) A letter from the Chairman of the Ways and Means Committee to the Counsel to the Governor of the State of New York, dated June 2, 1978, also recommending approval of Senate Bill No. 7497. He stated in said letter that "this legislation amends the Tax Law and administrative code to alleviate this problem."

CONCLUSIONS OF LAW

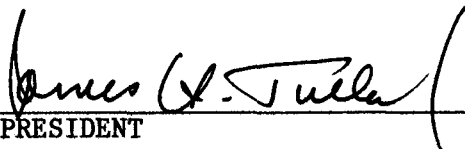
A. That the Legislature, when they amended section 618(4) of the Tax Law through chapter 424 of the Laws of 1978, specifically limited its applicability by providing that only those "taxable years beginning after December thirty-first nineteen hundred seventy-seven." Since the years at issue are 1973, 1974 and 1975, petitioner was required to make the modification required by Tax Law sections 612(b)(11) and 618(4) then in effect.

B. That the petition of Carl F. Lomb Trust is denied and the refunds claimed per Claims for Credit or Refund of Personal Income Tax, dated March 9, 1977, for the years 1973, 1974 and 1975 are hereby dismissed.

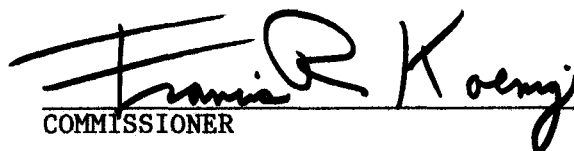
DATED: Albany, New York

STATE TAX COMMISSION

MAY 15 1981


PRESIDENT


COMMISSIONER


COMMISSIONER