

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Daniel C. Maclean :

: 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 1977 & 1978

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 Daniel C. Maclean, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel C. Maclean
22 Peach Hill Rd.
Darien, CT 06820

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.

Arnie P. Hageland

J. Vredenburg

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

May 15, 1981

Daniel C. Maclean
22 Peach Hill Rd.
Darien, CT 06820

Dear Mr. Maclean:

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

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DANIEL C. MACLEAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1977 and 1978.	:	

Petitioner, Daniel C. Maclean, 22 Peach Hill Road, Darien, Connecticut 06820, 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 1977 and 1978 (File No. 29631).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 8, 1980 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed the adjustment to income taken by petitioner for alimony payments made.

II. Whether said disallowance by the Audit Division was in violation of the Privileges and Immunities Clause and the Full Faith and Credit Clause of the Federal Constitution.

III. Whether, in the event alimony is not a proper adjustment for purposes of subdivision b of section 632 of the Tax Law, petitioner should be permitted two additional exemptions for each year at issue, for his child and former wife.

4. For both years at issue, petitioner filed a New York State Income Tax Nonresident Return. In 1977, petitioner adjusted his total income by subtracting therefrom alimony paid; this adjustment was made at line 15 of Schedule A. In 1978, petitioner treated alimony paid as a subtraction modification, on Schedule C "Additions or (Subtractions)".

5. Petitioner's child and former wife are also residents of the State of Connecticut.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a resident individual is his Federal adjusted gross income for that year, subject to the modifications specified by section 612 of Article 22 of the Tax Law.

B. That the adjusted gross income of a nonresident individual is defined for purposes of Article 22 of the Tax Law as the net amount of income, gain, loss and deduction entering into his Federal adjusted gross income, derived from or connected with New York sources. Section 632(a). Income and deductions from New York sources is defined by subdivision b of the same section, as follows:

"(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:

* * *

"(B) a business, trade, profession or occupation carried on in this state."

The above-quoted language encompasses deductions for such items as entertainment and away-from-home expenses.

C. That for taxable years beginning before January 1, 1977, alimony payments (taxed to the recipient thereof) were treated, under the Internal Revenue Code, as itemized deductions of the obligor spouse. Internal Revenue Code former Section 215. The New York resident who itemized deductions on his

personal income tax return received the full tax advantage of alimony paid. The nonresident who itemized deductions on his New York personal income tax return received the tax advantage of alimony paid to the extent of the limitation percentage.

D. That pursuant to the Tax Reform Act of 1976, the alimony deduction was moved from an itemized deduction to a deduction in determining adjusted gross income. Internal Revenue Code Section 62(13), as added by Pub. L. No. 94-455, 90 Stat. 1520 (1976). The purpose was to make the deduction available to taxpayers who elected the standard deduction, as well as to those who elected to itemize their deductions. H.R. Rep. No. 94-658, 94th Cong., 2nd Sess. 13, reprinted in [1976] U.S. Code Cong. & Ad. News 2908.

By the very definition of New York adjusted gross income the resident obligor spouse receives the benefit of the alimony deduction.

For purposes of the New York personal income tax, the nonresident can no longer reap any tax benefit for alimony paid.

E. That, in determining whether to award alimony, and the duration and amount of the award, Connecticut (and New York¹) courts give primary consideration to means and needs: the income, financial resources and earning ability of the obligor spouse; and the needs and independent means of the recipient spouse. Conn. Gen. Stat. Ann. Section 46b-82. deCossy v. deCossy, 172 Conn. 202; Stoner v. Stoner, 163 Conn. 345; Shrager v. Shrager, 144 Conn. 483. Should there occur a substantial change in the circumstances of either party, such as the obligor spouse's loss of employment, the court is authorized to set aside or alter the amount of alimony previously set. Conn. Gen. Stat. Ann. Section 46b-86(a). Conroy v. Conroy, 32 Conn. Sup. 92.

¹ N.Y. Domestic Relations Law Section 236. Fomenko v. Fomenko, 50 A.D.2d 712; Lipman v. Lipman, 38 A.D.2d 556; Aronson v. Aronson, 29 A.D.2d 732; Bruce v. Bruce, 275 A.D. 808.

There exists a well-established relationship between the obligor spouse's income and the amount of alimony awarded by the court. However, alimony is not a deduction attributable to petitioner's profession carried on in this state, within the meaning of section 632(b)(1)(B).²

F. That the constitutionality of the laws of New York, such as section 632 of the Tax Law in this instance, is presumed at the administrative level of the State Tax Commission.

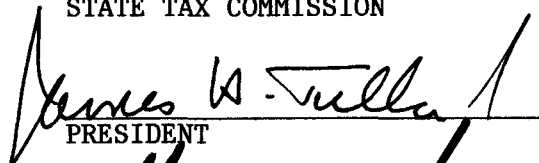
G. That for purposes of Article 22, petitioner may claim the same number of exemptions (subject to the limitation percentage) to which he was entitled for Federal income tax purposes in the taxable year. Sections 636 and 616. The statutory entitlement is not altered nor influenced by the result reached in Conclusion of Law "E".

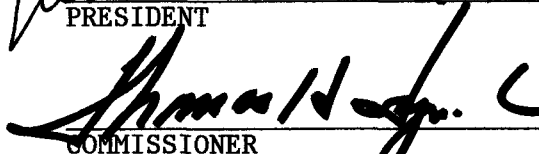
H. That the petition of Daniel C. Maclean is hereby denied, and the Notice of Deficiency issued February 7, 1980 is sustained in full.

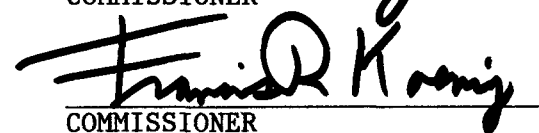
DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

² To conclude otherwise might raise the question of whether such amounts are taxable to the nonresident recipient spouse under Article 22.