

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Irving & Edith Maidman :

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 1970 & 1971. :

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Irving & Edith Maidman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving & Edith Maidman  
1465 Broadway  
New York, NY

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  
5th day of February, 1981.

*Corwin P. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
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of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Years 1970 & 1971. :

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Donald Steinberg 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. Donald Steinberg  
200 Park Ave.  
New York, NY

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  
5th day of February, 1981.

*Conrad P. Haglund*

*J. Vredenburg*

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

February 5, 1981

Irving & Edith Maidman  
1465 Broadway  
New York, NY

Dear Mr. & Mrs. Maidman:

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  
Donald Steinberg  
200 Park Ave.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
IRVING MAIDMAN and EDITH MAIDMAN	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Years 1970	:	
and 1971.	:	

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The petitioners, Irving Maidman and Edith Maidman, 1465 Broadway, New York, New York, filed petitions for revision or for refund of personal income taxes under Article 22 of the Tax Law for the years 1970 and 1971 (File Nos. 13290 and 13291).

The petitioners have requested, in writing, that this matter be submitted to the State Tax Commission for a decision without the necessity of a formal hearing.

The State Tax Commission, based upon the record, as it is presently constituted, makes the following decision.

ISSUE

Whether petitioners are required to make the modification for allocable expenses attributable to items of tax preference and if so whether the modification should include interest expenses claimed as part of itemized deductions.

FINDINGS OF FACT

1. On July 13, 1971, petitioners Irving Maidman and Edith Maidman timely filed a New York State income tax resident return for 1970 in which they reported total New York tax due of \$13,453.32.

2. On November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency and Statement of Audit Changes against the petitioners for the year 1970,

making an adjustment for allocable expenses attributable to items of tax preference in excess of the specific deduction. The Notice of Deficiency imposed additional tax due of \$29,808.74 plus interest of \$4,674.01 for a total of \$34,482.75. Petitioners subsequently timely filed a petition for redetermination of said deficiency for the year 1970.

3. On October 31, 1972 the petitioners filed a New York State income tax resident return for 1971 and reported a total tax due of \$8,203.48. Petitioners were granted extensions to file their Federal income tax return for 1971 until September 15, 1972. The 1971 return was dated October 3, 1972 and was mailed on October 31, 1972. No ground for reasonable cause for failure to file on or before the extended due date has been presented.

4. On September 30, 1974, the Income Tax Bureau issued a Notice of Deficiency and Statement of Audit Changes against the petitioners for the year 1971, making an adjustment for allocable expenses attributable to items of tax preference in excess of the specific deduction. The personal income tax was adjusted by imposing additional tax due in the amount of \$22,336.34 plus penalty of \$260.68, for failure to pay estimated tax plus penalty of \$2,233.63 for failure to file a tax return on or before the prescribed due date, plus interest of \$3,293.72 for a total of \$28,124.37. The petitioners timely filed a petition for redetermination of said deficiency for the year 1971.

5. Petitioners argue that the interest expense claimed as an itemized deduction should be reclassified from a personal or non-business expense to a business expense. No evidence was adduced to show the purpose of the claimed interest deduction.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the interest expense claimed on their return was incurred as a business expense. Therefore, the interest expense is deductible solely by reason of section 163 of the Internal Revenue Code.

B. That section 623(b) of the Tax Law provides in part that the allocable expenses of a resident individual shall include that portion of the New York itemized deductions of an individual of interest deducted solely by reason of section 163 of the Internal Revenue Code as modified by section 615(d) of the Tax Law.

C. That the Income Tax Bureau properly computed the modification for allocable expenses attributable to items of tax preference in accordance with section 623 of the Tax Law.

D. That petitioners have failed to show that they were not required to file a declaration of estimated tax for 1971 and have not shown that their failure to file their 1971 income tax return on or before the extended due date was due to reasonable cause; accordingly, penalties asserted under section 685 of the Tax Law are sustained.

E. That the petitions of Irving Maidman and Edith Maidman for 1970 and 1971 are in all respects denied and the deficiencies issued November 26, 1973 for 1970 and September 30, 1974 for 1971 are sustained.

DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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

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Very truly yours,

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Donald Steinberg  
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New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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C. That the Income Tax Bureau properly computed the modification for allocable expenses attributable to items of tax preference in accordance with section 623 of the Tax Law.

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DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION

*James G. Tully*  
PRESIDENT

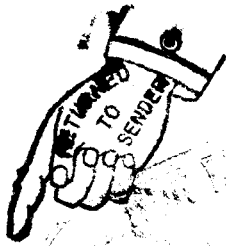
*Thomas H. G. C.*  
COMMISSIONER

*Francis R. Koenig*  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N. Y. 12227



NON RECEIVED (UNCLAIMED)

Irving & Edith Maizman  
1465 Broadway  
New York, NY

NON RECEIVED (UNCLAIMED)

CERTIFIED

P30-8915354

MAIL