

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph & Roslyn Manganaro :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976 _____

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 June, 1981, he served the within notice of Decision by certified mail upon Joseph & Roslyn Manganaro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph & Roslyn Manganaro
57 89th St.
Brooklyn, NY 11209

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 June, 1981.

Connie A. Hageland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph & Roslyn Manganaro :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC :
Income Tax under Article 22 & 30 of the Tax Law :
for the Year 1976

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 June, 1981, he served the within notice of Decision by certified mail upon Leonard Bailin 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. Leonard Bailin
299 Broadway
New York, NY 10007

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 June, 1981.

Cornie A. Hagelund

J. Vredenburg

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

June 5, 1981

Joseph & Roslyn Manganaro
57 89th St.
Brooklyn, NY 11209

Dear Mr. & Mrs. Manganaro:

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
Leonard Bailin
299 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH MANGANARO and ROSLYN MANGANARO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Articles 22 and 30 of the Tax Law for the	:	
Year 1976.	:	

Petitioners, Joseph Manganaro and Roslyn Manganaro, 57 89th Street, Brooklyn, New York 11209, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 24066).

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 October 21, 1980 at 10:45 A.M. Petitioners appeared by Leonard Bailin, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner Joseph Manganaro's New York City taxable income shall be the same as his reported New York State taxable income, and if so required, does this violate petitioner's right under the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

FINDINGS OF FACT

1. Petitioners, Joseph Manganaro and Roslyn Manganaro, filed a joint New York State Income Tax Resident Return with New York City Personal Income Tax, Form IT-201/208 for 1976. On said return, petitioner Joseph Manganaro deducted from his reported New York City taxable income excess contributions made for

him by his professional corporation to a "Keogh" plan in the amount of \$24,991.00. In addition, petitioner Joseph Manganaro claimed a capital loss of \$1,000.00.

2. On March 30, 1978, the Audit Division issued separate notices of deficiencies against each petitioner for the year 1976. The Notice issued against petitioner Joseph Manganaro asserted personal income tax of \$638.53, plus interest of \$51.75, for a total of \$690.28. The Notice was issued on the grounds that the excess contributions of \$24,991.00 made for petitioner's benefit by his professional corporation to a "Keogh" plan is required to be added back to his reported New York City taxable income. In addition, the capital loss was limited to \$500.00 for computing both his New York State and New York City taxable income.

The Notice issued against petitioner Roslyn Manganaro asserted personal income tax of \$100.54, plus interest of \$8.14, for a total of \$108.68. The Notice was issued on the grounds of reallocation of withholding taxes paid by petitioner Joseph Manganaro.

3. At the hearing, petitioner Joseph Manganaro conceded to the disallowance made to the reported capital loss.

4. Petitioner Joseph Manganaro argued that as a professional, operating in corporation form, the add back provisions adopted by New York State as applied to New York City personal income tax is a denial of equal protection under the Fourteenth Amendment of the Federal Constitution. He made this argument on the grounds that all other individuals operating as a corporation, other than professionals, are not required to add back to their individual taxable income, excess payments paid by their corporation to a "Keogh" plan.

CONCLUSIONS OF LAW

A. That petitioner Joseph Manganaro's New York City taxable income shall mean and be the same as his New York State taxable income in accordance with

the meaning and intent of Article 30, section 1303 of the Tax Law which provides that the New York City taxable income of a New York City resident individual shall mean and be the same as their New York State taxable income as defined in section 611 of the Tax Law.

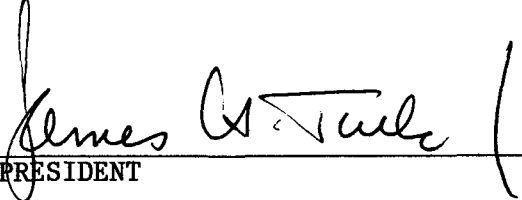
B. That an administrative hearing is not the proper forum to challenge the jurisdiction of the State Tax Commission on the ground that a statute is unconstitutional. The constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to decide the constitutionality of a law (Tully v. Griffin, Inc., 429 U.S. 68 (1976); Hospital Television Systems, Inc. v. New York State Tax Commission, 63 Misc.2d 705, 311 N.Y.S.2d 568 aff'd. 41 A.D.2d 576, 339 N.Y.S.2d 603).

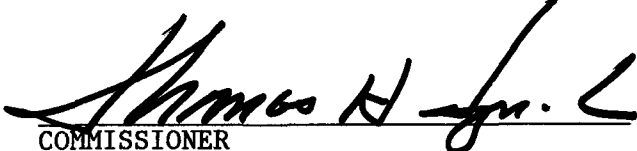
C. That the petition of Joseph Manganaro and Roslyn Manganaro is denied and the Notice of Deficiency issued March 30, 1978, is sustained together with such interest as may be legally owing.


DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER