

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Sylvia Martin

:

:

: 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 :
1971 & 1972

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 Sylvia Martin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sylvia Martin
c/o R. Allan Martin
100 Wall St.
New York, NY 10005

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.

Cornelia R. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sylvia Martin :

: 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 :
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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 Louis L. Levy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

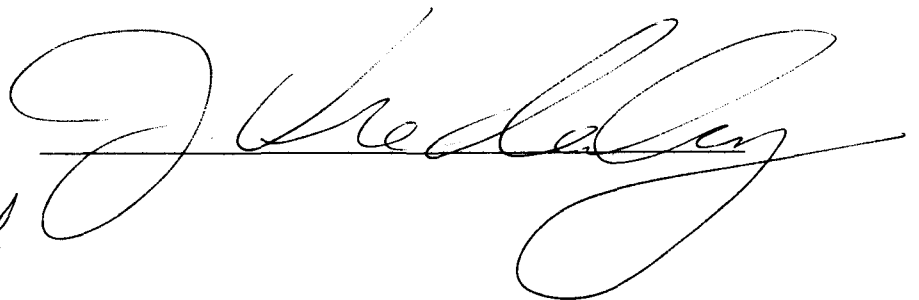
Mr. Louis L. Levy
H. J. Behrman & Co.
666 Fifth Ave.
New York, NY 10019

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.

Gonnie A. Hagelund



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

June 5, 1981

Sylvia Martin
c/o R. Allan Martin
100 Wall St.
New York, NY 10005

Dear Ms. Martin:

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
Louis L. Levy
H. J. Behrman & Co.
666 Fifth Ave.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SYLVIA MARTIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	

Petitioner, Sylvia Martin, c/o R. Allan Martin, 100 Wall Street, New York, New York 10005, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 15958).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 27, 1978 at 9:15 A.M. Petitioner appeared by H. J. Behrman & Company (Louis Levy and Nelson Leicht, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether the amount of petitioner's net operating loss deduction from 1973 and 1974 to 1971 is limited to an amount that does not exceed the amount of petitioner's Federal taxable income for 1971.

II. Whether the amount of petitioner's net operating loss deduction from 1975 to 1972 should be disallowed on the ground that petitioner had negative Federal taxable income for 1972.

FINDINGS OF FACT

1. Petitioner, Sylvia Martin, sustained net operating losses for 1973, 1974 and 1975 as follows:

1973	-	\$ 57,392.00
1974	-	258,750.00
1975	-	99,174.00

2. For Federal income tax purposes the aforesaid net operating losses for 1973, 1974 and 1975 were carried back as follows:

a. The net operating loss of \$57,392.00 for 1973 was carried back to 1970 and 1971.

b. The net operating loss of \$258,750.00 for 1974 was carried back to 1971.

c. The net operating loss of \$99,174.00 for 1975 was carried back to 1972.

3. Corresponding claims were filed by petitioner with the New York State Department of Taxation and Finance for the same taxable years carrying back the identical amounts that were carried back for Federal income tax purposes.

4. Petitioner filed a Claim for Credit or Refund of Personal Income Tax with the New York State Department of Taxation and Finance, dated December 10, 1974, pursuant to which petitioner claimed a refund of \$4,135.00. Said Claim for Refund was based on a carryforward to 1971 of the balance of the 1973 net operating loss not absorbed in 1970.

Petitioner also filed a Claim for Credit or Refund of Personal Income Tax with the New York State Department of Taxation and Finance, dated September 22, 1975, pursuant to which petitioner claimed a refund of \$46,538.00 for 1971 based on the aforesaid net operating loss of \$258,750.00 for 1974.

5. Under date of May 13, 1976, the Audit Division addressed a Notice of Disallowance to petitioner advising her that the aforesaid claim for refund of \$46,538.00 had been allowed to the extent of \$20,177.46 and disallowed as to the balance of \$26,360.54. There was no evidence submitted to indicate that aforesaid claim for refund of \$4,135.00 was disallowed by the Audit Division.

6. Disallowance of the said sum of \$26,360.54 was based on the fact that petitioner's Federal taxable income for 1971 was \$123,701.00. The contention of the Audit Division was that the permissible total amount of the aforesaid net operating loss carryback from 1973 and 1974 to 1971 is limited to an amount that does not exceed the Federal taxable income for the tax year to which the loss is carried back.

7. Petitioner filed a Claim for Credit or Refund of Personal Income Tax with the New York State Department of Taxation and Finance, dated January 4, 1977, pursuant to which petitioner claimed a refund in the sum of \$19,881.00 for 1972 based on the aforesaid net operating loss of \$99,174.00 for 1975.

8. Under date of August 1, 1977, the Audit Division addressed a Notice of Disallowance to petitioner disallowing the entire amount of said claim of \$19,881.00.

9. Disallowance of the said claim of \$19,881.00 was based on the fact that petitioner's Federal taxable income for 1972 was a negative amount (her Federal itemized deductions exceeded her Federal gross income).

10. Petitioner timely filed petitions for refunds of the aforesaid sums of \$26,360.54 and \$19,881.00.

11. Petitioner argues that the New York net operating loss deduction is limited to modified taxable income, computed under section 172(b)(2) of the Internal Revenue Code. Petitioner's modified taxable income for 1971 is \$357,819.00 and for 1972 is \$293,177.00. Accordingly, it is contended that the full amount of the carryback for 1971 (\$290,499.00) and for 1972 (\$99,174.00) should be allowed, since the carrybacks are less than the modified taxable incomes. Petitioner cites as a basis for this argument the decisions reached by this Commission on October 3, 1977 in the Matter of the Petitions of William and Elizabeth Gregory, George and Mary Gregory and James and Margaret Sheils.

12. Petitioner also argues that even though she had a negative taxable income for 1972 a recomputation of her minimum tax should be made pursuant to the then proposed Treasury Regulation 1.57-4.

CONCLUSIONS OF LAW

A. That although the language used in the decisions in the Matter of the Petitions of William and Elizabeth Gregory, George and Mary Gregory and James and Margaret Sheils refers to modified taxable income, the final result of said decisions were to limit the New York net operating loss deduction to positive Federal taxable income.

B. That section 172 of the Internal Revenue Code provides that the net operating loss is a deduction from gross income to arrive at adjusted gross income. However, for the purpose of determining carrybacks and carryovers the code required that the deduction shall not be used to reduce taxable income for the deduction year to an amount less than zero. As the result of the interaction of these two principles, it is apparent that the true economic benefit generated by the net operating loss deduction is a partial or total reduction of Federal taxable income. (See Matter of James H. Sheils, et al. v. State Tax Commission, __ N.Y.2d __ (February, 1981), rev'g 72 A.D.2d 896.)

C. That pursuant to Treasury Regulation 1.57-4, a limitation on Items of Tax Preference is computed when a taxpayer had deductions in excess of gross income and all or a part of any items of tax preference described in section 1.57-1 of the Treasury Regulations results in no tax benefit due to modifications required under section 172(c) or section 172(b)(2) of the Internal Revenue Code in computing the amount of the net operating loss or the net operating loss to be carried to a succeeding taxable year. Based on Treasury Regulation

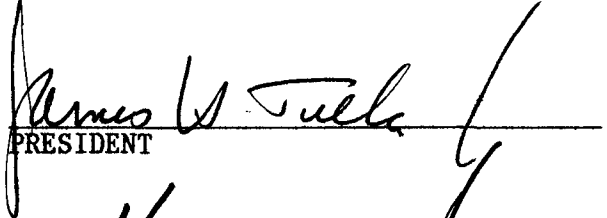
1.57-4 the Audit Division is directed to recompute a limitation for petitioner's Items of Tax Preference for 1972 and to determine whether petitioner is entitled to a refund of personal and minimum income tax.

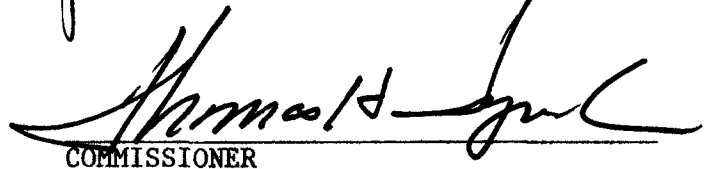
D. That the petitions of Sylvia Martin are granted to the extent indicated in Conclusion of Law "C", supra and in all other respects denied. The Notice of Disallowance dated May 13, 1976 is sustained and the Notice of Disallowance dated August 1, 1977 is partially sustained to the extent determined by the Audit Division.

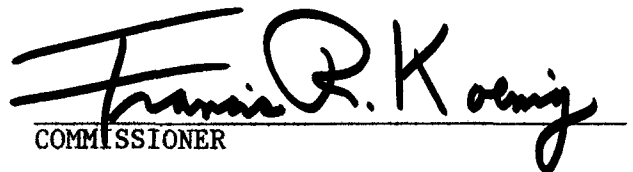
DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER