

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
June S. Sicard Trust :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 30 of the Tax Law for the Years :
1976 & 1977.

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon June S. Sicard Trust, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

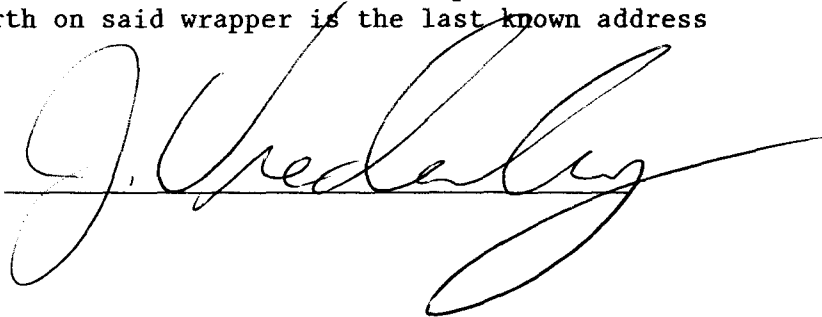
June S. Sicard Trust
c/o Frank Herrmann, Trustee
100 Wall St., 15th Fl.
New York, NY 10005

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
23rd day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
June S. Sicard Trust :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 30 of the Tax Law for the Years :
1976 & 1977.

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Edward A. Kotite the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward A. Kotite
Curtis, Mallet-Prevost, Colt, & Mosle
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 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
23rd day of October, 1981.

Charles R. Haglund

J. Vredenburg

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

October 23, 1981

June S. Sicard Trust
c/o Frank Herrmann, Trustee
100 Wall St., 15th Fl.
New York, NY 10005

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) 1312 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
Edward A. Kotite
Curtis, Mallet-Prevost, Colt, & Mosle
100 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions
of
JUNE S. SICARD TRUST
for Redetermination of Deficiencies or for
Refunds of Personal Income Tax under Article
30 of the Tax Law for the Years 1976 and 1977.

:
:
:
:
:
:
:
:
:

DECISION

Petitioner, June S. Sicard Trust, c/o Frank Herrmann, Trustee, 100 Wall Street, 15th Floor, New York, New York 10005, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 30 of the Tax Law for the years 1976 and 1977 (File No. 26039 and 28565).

On December 1, 1980, petitioner advised the State Tax Commission, in writing, that it 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, for the years 1976 and 1977, petitioner may use a property basis for New York City purposes, which is different from that basis used for New York State purposes, in computing a capital gain derived from the sale of property during taxable year 1975, where such gain was reported using the installment method.

FINDINGS OF FACT

1. Petitioner, June S. Sicard Trust, timely filed New York State income tax fiduciary returns for the years 1976 and 1977 whereon it reported a capital gain derived from the sale of property located at 767 Lexington Avenue, New York City. In computing said gain, petitioner used a greater property basis for New York City purposes than that used for New York State purposes, thus

resulting in its reported New York City taxable income being substantially less than its reported New York State taxable income.

2. On June 7, 1978, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1976, wherein it held that the New York City taxable income of a New York City resident trust is the same as the New York State taxable income of a resident New York State trust. This applies to the minimum taxable income as well as the personal taxable income. Based on said holding, petitioner's New York City personal and minimum taxable incomes were increased to the reported New York State amounts. Accordingly, a Notice of Deficiency was issued against petitioner on March 16, 1979, asserting additional New York City personal income tax of \$377.29, New York City minimum income tax of \$201.28, plus interest of \$94.18, for a total due of \$672.75.

3. On April 26, 1979, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1977, wherein it held that the New York City taxable income of a New York City resident trust is the same as the New York State taxable income of a resident New York State trust and is applicable to the minimum taxable income as well as the personal taxable income. Based on said holding, petitioner's New York City personal and minimum taxable incomes were increased to the reported New York State amounts. Accordingly, a Notice of Deficiency was issued against petitioner on August 31, 1979, asserting additional New York City personal income and New York City minimum income tax of \$578.70, plus interest of \$67.79, for a total due of \$646.49.

4. Petitioner contended that since the gain derived from the sale of property was realized at the time of sale, which was December 5, 1975, the basis to be properly applied to the property under the then existing New York City tax law would be the fair market value on July 1, 1966. It maintained

that recognition of that gain in subsequent years under the installment method of reporting cannot subject the basis to adjustment based on section 1303 of the Tax Law, since such law did not become effective until taxable year 1976.

CONCLUSIONS OF LAW

A. That section 1303 of the Tax Law provides in pertinent part that:

"The city taxable income of a city resident estate or trust shall mean and be the same as its New York taxable income..."

That section 1301-A(b) similarly provides that:

"The City minimum taxable income of a resident individual, estate or trust shall be the same as the New York minimum taxable income of a resident individual, estate or trust."

B. That the nature of the gain and the rate of tax to be applied is determined by the law in effect at the time the payment is received, not the law in effect at the time of the sale (Picchione v. Commissioner, 440 F. 2d 170; U.S. Cert. den. 404 U.S. 828, 30 L. Ed. 2d 57). Since the sections of the Tax Law cited in Conclusion of Law "A", supra, were in effect at the time of payment, petitioner was required to use the same New York taxable income and New York minimum taxable income in computing the New York City personal and minimum income taxes. Therefore, petitioner's property basis for New York City purposes must be the same basis used for New York State purposes.

C. That the petitions of June S. Sicard Trust are denied and the notices of deficiency issued March 16, 1979 and August 31, 1979 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER