

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dewitt & Lila Acheson Wallace :

: 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 & 1973.

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 17th day of July, 1981, he served the within notice of Decision by certified mail upon Dewitt & Lila Acheson Wallace the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dewitt & Lila Acheson Wallace
"High Winds" Bryam Lake Rd.
Mount Kisco, NY 10549

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
17th day of July, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dewitt & Lila Acheson Wallace :

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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 17th day of July, 1981, he served the within notice of Decision by certified mail upon Joseph F. McDonald the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph F. McDonald
25 Broadway
New York, NY 10004

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
17th day of July, 1981.

Annice A. Bayland

J. Vredenburg

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

July 17, 1981

Dewitt & Lila Acheson Wallace
"High Winds" Bryam Lake Rd.
Mount Kisco, NY 10549

Dear Mr. & Mrs. Wallace:

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
Joseph F. McDonald
25 Broadway
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DeWITT WALLACE and LILA ACHESON WALLACE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971, 1972 and 1973.	:	

Petitioners, DeWitt Wallace and Lila Acheson Wallace, "High Winds", Bryan Lake Road, Mount Kisco, New York 10549, 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 1971, 1972 and 1973 (File No. 16538).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 6, 1979 at 9:25 A.M. Petitioners appeared by Lord, Day & Lord, Esqs. (Joseph F. McDonald and Keven Conzelmann, Esqs., of counsel) and William Barnabas McHenry, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irving Atkins and Frank Levitt, Esqs., of counsel).

ISSUE

Whether the limitation imposed on the amount of allowable charitable contribution deductions for the tax years 1971, 1972 and 1973 is subject to modification by other itemized deductions.

FINDINGS OF FACT

1. This is an appeal from a determination by the Audit Division of deficiencies in New York State personal income taxes for the tax years 1971, 1972 and 1973.

2. Petitioners executed consents extending the period of limitation upon assessment of personal income taxes for the years 1971 and 1972 to and through April 15, 1977. The State properly validated said consents.

3. The timely Notice of Deficiency, dated June 28, 1976, alleges deficiencies in tax as follows:

1971	\$20,380.36
1972	29,716.80
1973	<u>44,243.25</u>
	\$94,340.41

4. The alleged deficiencies pertain to the computation under the Internal Revenue Code of the charitable contributions deductions of DeWitt and Lila Acheson Wallace, the petitioners herein.

5. The correctness of the alleged deficiencies depends upon whether petitioners properly calculated the amount of their "unlimited" charitable deductions under section 170(f)(6)(A) (before amendment by Section 1901(a)(28) PL 94-455 10/4/76) of the Internal Revenue Code.

6. Petitioners were cash-basis calendar year taxpayers.

7. Petitioners timely filed joint New York State resident personal income tax returns and joint Federal personal income tax returns for the tax years 1971, 1972 and 1973.

8. Petitioners' Federal adjusted gross income, total actual charitable contributions, and itemized deductions other than charitable contributions deductions for the years 1971, 1972 and 1973 were as set forth in Table I below:

TABLE I

<u>Year</u>	<u>Adjusted Gross Income</u>	<u>Actual Charitable Contributions</u>	<u>Other Itemized Deductions</u>	<u>Allowance of Deductions for Personal Exemptions</u>
1971	\$3,772,997	\$ 4,660,865	\$142,874	\$2,700
1972	4,246,765	10,436,636	190,280	3,000
1973	4,603,422	8,810,465	291,955	3,000

9. Petitioners deducted the amounts set forth in Table II below as charitable contributions on their Federal income tax returns for the years 1971, 1972 and 1973:

TABLE II

<u>Year</u>	<u>Charitable Contribution Deduction</u>
1971	\$2,792,018
1972	2,887,800
1973	2,854,121

10. Petitioners computed their charitable contribution deductions under the Internal Revenue Code section 170(f)(6) (before amendment by Section 1901(a)(28) PL 94-455 10/4/76) for the years in issue as follows:

1971

1. Adjusted Gross Income ("AGI")	\$ 3,772,997
2. Total Contributions	4,660,865
3. Amount Otherwise Allowable under section 170(a)	3,772,997
4. Amount of Reduction	
(a) AGI	3,772,997
(b) Transitional Income ("TI") Percentage	x 26%
(c) TI Percentage times AGI	\$ 980,979
(d) Less: Taxable Income	(0)
(e) Amount of Reduction	\$ 980,979
5. Section 170(f)(6)(A) Deduction (#3 less #4)	2,792,018
6. Deduction Actually Claimed (as shown on 1971 federal income tax return)	\$ 2,792,018

1972

1. AGI	\$ 4,246,765
2. Total Contributions	10,436,636
3. Amount Otherwise Allowable under section 170(a)	4,246,765
4. Amount of Reduction	
(a) AGI	4,246,765
(b) TI Percentage	x 32%
(c) TI Percentage times AGI	\$ 1,358,965
(d) Less: Taxable Income	(0)
(e) Amount of Reduction	\$ 1,358,965
5. Section 170(f)(6)(A) Deduction (#3 less #4)	\$ 2,887,800
6. Deduction Actually Claimed (as shown on 1972 Federal income tax return)	\$ 2,887,800

1973

1. AGI	\$ 4,603,422
2. Total Contributions	8,810,465
3. Amount Otherwise Allowable under section 170(a)	4,603,422
4. Amount of Reduction	
(a) AGI	4,603,422
(b) TI Percentage	x 38%
(c) TI Percentage times AGI	\$ 1,749,300
(d) Less: Taxable Income	(0)
(e) Amount of Reduction	\$ 1,749,300
5. Section 170(f)(6)(A) Deduction (#3 less #4)	\$ 2,854,122
6. Deduction Actually Claimed (as shown on 1973 Federal income tax return)	\$ 2,854,121

11. Petitioners' Federal income tax returns for 1971, 1972 and 1973 each included a statement electing the "unlimited" charitable contributions deduction.

12. During each of the years at issue and in eight out of the ten years preceding each such year, petitioners made charitable contributions which, taken together with their income tax paid during those years, exceeded the appropriate transitional deduction percentage of their taxable income specified in the Internal Revenue Code section 170(f)(6)(B) (before amendment by Section

1901(a)(28) PL 94-455 10/4/76), computed without regard to charitable contributions deductions, personal exemptions, or net operating loss carrybacks.

13. The DeWitt Wallace Fund, the L.A.W. Fund, the High Winds Fund, and the Lakeview Fund (collectively, the "Funds") are all organizations determined by the Internal Revenue Service to be exempt from tax by virtue of section 501(c)(3) of the Internal Revenue Code.

14. Mr. William Barnabas McHenry, the Secretary of the funds acknowledged that petitioners were not only substantial contributors; but, along with him, they were also directors and managers of all of the funds for 1971, 1972 and 1973. In addition, petitioners served as officers of the funds during those years as follows:

	<u>Mr. Wallace</u>	<u>Mrs. Wallace</u>	<u>Mr. McHenry</u>
L.A.W. Fund, Inc.	Vice-Pres.	President	Secretary
DeWitt Wallace Fund, Inc.	President Treasurer	Vice-Pres.	Secretary
High Winds Fund, Inc.	Vice-Pres.	President Treasurer	Secretary
Lakeview Fund, Inc.	President Treasurer	Vice-Pres.	Secretary

15. That other than a raw allegation, the Audit Division failed to offer any proof that petitioners self-dealed in any manner in connection with the funds.

16. Neither petitioners nor Mr. McHenry received any compensation from any of the funds.

17. Petitioners' New York State personal income tax, total New York income and total New York itemized deductions (other than charitable contributions

deductions), and personal exemptions for the years 1971, 1972 and 1973 were as set forth in Table III below:

<u>Year</u>	<u>Total New York Income</u>	<u>Other New York Itemized Deductions</u>	<u>Personal Exemptions</u>
1971	\$3,848,340	\$24,108	\$2,600
1972	4,322,562	17,869	2,600
1973	4,682,983	25,240	2,600

CONCLUSIONS OF LAW

A. That the parties herein stipulated:

1. Petitioners met the requirements of section 170(b)(1)(C) of the Internal Revenue Code for the taxable years 1971, 1972 and 1973 and were therefore entitled to elect that the percentage limitations of section 170(b)(1)(A), (B) and (D) and the rules of section 170(e)(1)(B) of the Internal Revenue Code do not apply in the computation of petitioners' charitable contributions deduction under section 170(a)(1) of the Internal Revenue Code.

2. Petitioners filed a valid election, pursuant to section 170(g)(1)(A) of the Internal Revenue Code and Rev. Rul. 65-126, 1965-1 C.B. 125, to have section 170(b)(1)(C) apply to the computation of their charitable contributions deduction for the taxable years 1971, 1972 and 1973.

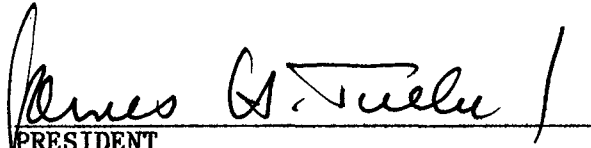
B. That taxpayers who qualify and so elect the "unlimited" deduction cannot reduce taxable income (after other deductions are taken) to an amount that would be less than 26 percent of adjusted gross income for 1971, 32 percent for 1972 and 38 percent for 1973. See section 170(f)(6) of the Internal Revenue Code before amendment by Section 1901(a)(28) PL 94-455 10/4/76.

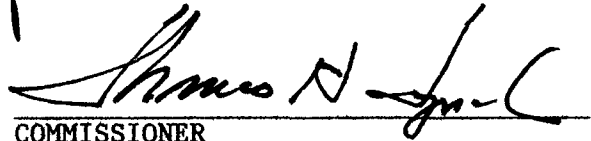
C. That the petition herein is denied and the Notice of Deficiency dated June 28, 1976 is sustained.


DATED: Albany, New York

JUL 17 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER