

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Milton & Mary Brumer :

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

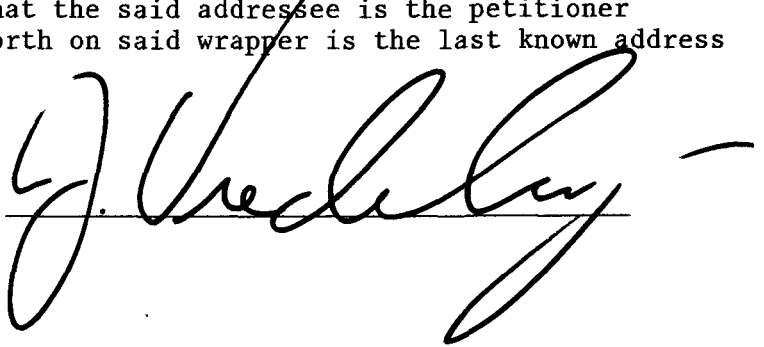
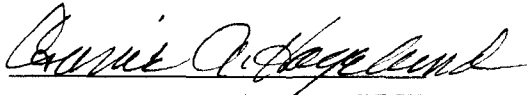
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Milton & Mary Brumer, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton & Mary Brumer  
6750 Entrada Place  
Boca Raton, FL 33433

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  
6th day of October, 1982.

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

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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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Nemi H. Khivesara the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nemi H. Khivesara  
John F. Brady & Co.  
500 Fifth Ave., Suite 1244  
New York, NY 10110

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  
6th day of October, 1982.

*Connie A. Highland*  
AUTHORISED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 114

*J. Vredenburg*

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

October 6, 1982

Milton & Mary Brumer  
6750 Entrada Place  
Boca Raton, FL 33433

Dear Mr. & Mrs. Brumer:

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 & 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Nemi H. Khivesara  
John F. Brady & Co.  
500 Fifth Ave., Suite 1244  
New York, NY 10110  
Taxing Bureau's Representative

## STATE TAX COMMISSION

1. Petitioners, Milton Brumer and Mary Brumer, filed a New York State Income Tax Resident Return for 1976 with New York City personal income tax included on said return. Petitioners computed their New York City income tax and New York City minimum income tax using a cost basis as of July 1, 1966 (the

date when New York City income tax came into force) with respect to the sale of securities by the petitioners in 1976, which were acquired in 1961.

2. On a subsequent date, the Audit Division issued a Statement of Refund Adjustment which disallowed petitioners' computation of the New York City taxes, on the grounds that Article 30 of the Tax Law provides that the New York City taxable income and minimum taxable income of a city resident shall be the same as the New York State taxable income and minimum taxable income. This action reduced petitioners' 1976 overpayment of \$34,533.03 to \$32,198.23, an adjustment of \$2,334.80.

3. On January 3, 1978, petitioners filed a Claim For Credit or Refund of Personal Income Tax for the refund adjustment of \$2,334.80. A formal Notice of Disallowance was issued by the Audit Division on August 27, 1979.

4. When New York City personal income tax was enacted in 1966 under Title T, Chapter 46 of the Administrative Code of the City of New York, there was a modification<sup>/1</sup> reducing federal adjusted gross income on the gain from the sale or other disposition of any property acquired prior to July 1, 1966 to the extent of the difference between:

- (1) The amount of the taxpayer's Federal adjusted gross income, and
- (2) The amount of the taxpayer's Federal adjusted gross income (if smaller than the amount described in (1) computed as if the basis of such property on the date of the sale or other disposition had been equal to either (i) its fair market value on July 1, 1966, plus or minus all adjustments to basis made with respect to such property for

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<sup>/1</sup> See T46 - 12.0(c)(9)

Federal income tax purposes for periods on and after July 1, 1966 or (ii) the amount realized from its sale or other disposition, whichever is lower. The total modification shall not exceed the amount described in I, II or III:

I if the taxpayer's Federal adjusted gross income reflects a net gain from the sale or other disposition of such property, the amount of such gain plus \$1,000;

II if the taxpayer's Federal adjusted gross income reflects a net loss from the sale or other disposition of such property, the amount by which \$1,000 exceeds such loss;

III or if the taxpayer's Federal adjusted gross income reflects neither a net gain nor a net loss from the sale or other disposition of such property, \$1,000. If a gain included in the taxpayer's federal adjusted gross income is from a sale of such property prior to July 1, 1966, reported on the installment method, the fair market value of such property on the date of such sale must be substituted for its fair market value on July 1, 1966.

5. On November 26, 1975, the tax imposed by Title T of Chapter 46 of the Administrative Code of the City of New York was repealed for taxable years beginning after December 31, 1975 and was replaced by Article 30 of the New York State Tax Law. This article had no such modification as stated above.

6. Petitioners contended they were entitled to use the value of the securities as of July 1, 1966, since New York State was entrusted with only administrative and collection functions of New York City income tax and New York City minimum income taxes after January 1, 1976.

7. Petitioners further contended that by not allowing them to use the value as of July 1, 1966 as a cost basis of the securities, they are compelled to pay taxes for the increase in value of the securities during the period January 1, 1961 to July 1, 1966 when there was no New York City income tax or minimum income tax. Petitioners maintain that such taxation would be improper and erroneous.

#### CONCLUSIONS OF LAW

A. That section 3 of Chapter 882 of the Laws of New York, enacted in the extraordinary session of 1975, provided that "[t]he tax imposed by Title T of Chapter 46 of the Administrative Code of the City of New York shall not apply for taxable years beginning after December thirty-first, nineteen hundred seventy five."

B. That section 1301-A(b) of the Tax Law provides that "[t]he 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 as defined in section six hundred twenty-two of this chapter."

C. That section 1303 of the Tax Law provides that "[t]he city taxable income of a city resident individual shall mean and be the same as his New York taxable income as defined in section six hundred eleven of this chapter."

D. That the modification made by petitioners on their New York State Income Tax Resident Return for 1976, as it applied to the New York City taxes, is not applicable for the year at issue in accordance with the sections of law stated above.

E. That the petition of Milton Brumer and Mary Brumer is denied and the Notice of Disallowance issued on August 27, 1979 is sustained.

DATED: Albany, New York  
OCT 06 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER