

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Marcia deF. Cammann

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 Year :
1975. :

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Marcia deF. Cammann, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marcia deF. Cammann
116 E. 63rd St.
New York, NY 10021

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
18th day of June, 1982.

Carrie A. Heyland

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Marcia deF. Cammann :

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 Year :
1975. :

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Gerry E. Feinberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerry E. Feinberg
777 Third Avenue
New York, NY 10021

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
18th day of June, 1982.

Carrie A. MacLennan

J. Vredenburg

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

June 18, 1982

Marcia deF. Cammann
116 E. 63rd St.
New York, NY 10021

Dear Ms. Cammann:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Gerry E. Feinberg
777 Third Avenue
New York, NY 10021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARCIA de F. CAMMANN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Marcia de F. Cammann, 116 East 63rd Street, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1975 (File No. 27639).

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 September 15, 1981 at 2:45 P.M. Petitioner Marcia de F. Cammann appeared by Gerry E. Feinberg, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioner, Marcia de F. Cammann's New York State long term capital gain before modification shall be the same as her reported Federal long term capital gain.

II. Whether petitioner, Marcia de F. Cammann, is subject to a penalty pursuant to section 685(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Marcia de F. Cammann, filed a New York State income tax resident return for subject year. On said return petitioner made the required

modification to the reported Federal long term capital gains. In addition to the required modification petitioner deducted \$9,485.00 from the reported capital gains as an adjustment to arrive at the New York basis.

2. On April 10, 1979, the Audit Division issued a Notice of Deficiency against petitioner asserting personal income tax of \$2,242.57 and section 685(c) penalty and interest of \$721.80 for a total of \$2,964.37. The Notice of Deficiency was based on a Statement of Audit Changes issued against petitioner under date of December 1, 1978, which increased petitioner's reported long term capital gain.

3. Petitioner was the remainderman of a nonresident trust created as of December 31, 1959. In 1975, petitioner received her distributive share of the trust corpus which consisted of various stocks.

In computing petitioner's long term capital gains for subject year, the preparer inadvertently used the creation date of the trust to establish the petitioner's basis for this sale of stock for New York State personal income tax purposes.

4. Petitioner conceded that the Audit Division correctly determined the value of the stock for the purpose of computing the long term capital gain.

5. Based on the testimony of the preparer of the petitioner's personal income tax return, the attorney for the Audit Division conceded that the penalties should be waived.

CONCLUSIONS OF LAW

A. That petitioner's New York State long term capital gain, before modification, shall be the same as her reported Federal long term capital gain.

B. That penalties asserted pursuant to section 685(c) of the Tax Law are cancelled.

C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated April 10, 1979, to be consistent with the Conclusions of Law determined herein; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as modified, is sustained, together with such interest as may be legally owing.

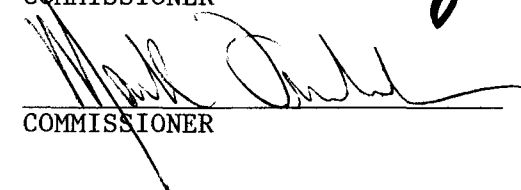
DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER