

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Milton Fletcher	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1970.	:	

State of New York
County of Albany

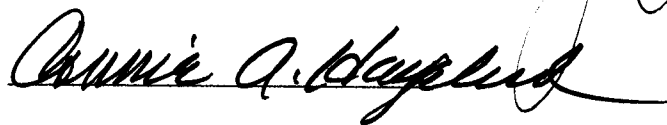
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of June, 1982, he served the within notice of Decision by certified mail upon Milton Fletcher, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

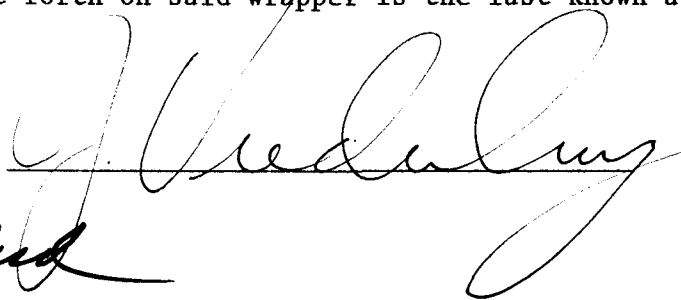
Milton Fletcher
85 New York Avenue
Congers, NY

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
4th day of June, 1982.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Milton Fletcher :

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 :
1970 :

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 4th day of June, 1982, he served the within notice of Decision by certified mail upon Myron W. Siskin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Myron W. Siskin
53 E. 34th St.
New York, NY 10016

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
4th day of June, 1982.

Bennie R. Hagelund

J. Vredenburg

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

June 4, 1982

Milton Fletcher
85 New York Avenue
Congers, NY

Dear Mr. Fletcher:

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
Myron W. Siskin
53 E. 34th St.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
MILTON FLETCHER
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1970.

DECISION

Petitioner, Milton Fletcher, 85 New York Avenue, Congers, New York, 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 1970 (File No. 00456).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on December 19, 1977 at 10:45 A.M. Additional documentary evidence was submitted by petitioner at the hearing and the matter was remanded to the Audit Division for further audit action, which has been completed. Petitioner appeared by Myron W. Siskin, Esq. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq. of counsel).

ISSUES

I. Whether petitioner is entitled to a \$1,000.00 capital loss on investments.

II. Whether petitioner has substantiated interest expense deductions and miscellaneous deductions.

FINDINGS OF FACT

1. Petitioner, Milton Fletcher, timely filed a New York State income tax resident return for 1970 on which he deducted, inter alia, a capital loss of \$1,000.00, interest expenses of \$7,717.13 and miscellaneous expenses of \$23,843.18.

Schedule A of the return included in miscellaneous income the sum of \$9,747.15, which was attributed to a New York State income tax refund. The refund, however, was not subtracted from total income on line 4 of the return.

2. On July 31, 1972 the Audit Division issued a Notice of Deficiency to petitioner which denied the aforementioned deductions and also asserted a gain of \$1,911,193.92, resulting in additional personal income tax due of \$267,699.16. The deficiency was imposed because petitioner had not appeared for an appointment at which he was to substantiate the deductions. The Notice of Deficiency did not give petitioner credit for the \$9,747.15 New York State tax refund.

3. At the formal hearing, petitioner produced voluminous material relating to the capital loss which had been sustained through investments. This material was reviewed by the Audit Division subsequent to the hearing and consequently the claimed adjustment of \$1,911,193.92 was withdrawn by the Audit Division and petitioner's capital loss of \$1,000.00 reinstated.

4. Petitioner's deductions for interest expense consisted of home mortgage \$87.00, County Trust Company \$4,801.00 and security margin account interest of \$2,916.13. The interest expense of \$4,801.00 was established at the hearing by testimony and by an audit confirmation statement of The County Trust Company showing that on August 5, 1970 the loan had a balance of \$52,625.00 and that the interest rate was nine percent. The other interest deductions were not substantiated by petitioner.

5. Petitioner's miscellaneous deductions consisted of \$1,500.00 for a legal fee, \$300.00 for "Invest. lit & broker calls" and \$22,043.18 for brokerage commissions paid on purchase and sale. The legal fee was paid in 1970 as a retainer for litigation brought by petitioner against an investment advisor and a broker for "churning" petitioner's account and was substantiated at the

hearing. The \$300.00 deduction was not substantiated. (The \$22,043.18 deduction will be treated in the Conclusions of Law, infra.)

CONCLUSIONS OF LAW

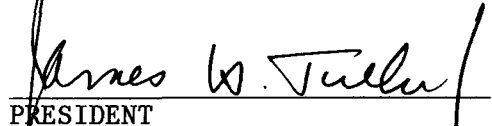
A. That Treas. Reg. Sec. 1.263(a)-2 provides that commissions paid in purchasing securities are capital expenditures and that commissions paid in selling securities (except for dealers) are an offset against the selling price. Accordingly, the deduction by petitioner of \$22,043.18 in brokerage commissions as a miscellaneous deduction was improper.

B. That the petition of Milton Fletcher is granted to the extent that the adjustment increasing income by \$1,911,193.92 is eliminated and a capital loss of \$1,000.00 allowed; the deduction for \$4,801.00 in interest expense is allowed and the \$1,500.00 miscellaneous deduction for a legal fee is allowed. Upon recomputation of petitioner's tax liability by the Audit Division, the New York State tax refund of \$9,747.15 is to be subtracted from Total Income in arriving at Total New York Income. The petition is in all other respects denied and the Notice of Deficiency otherwise sustained.


DATED: Albany, New York

JUN 04 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER