STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Lance J. Friedsam	:
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 1979.	: AFFIDAVIT OF MAILING

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 March, 1982, he served the within notice of Decision by certified mail upon Lance J. Friedsam, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lance J. Friedsam
72B Heritage Hill Rd.
New Canaan, CT 06840

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 March, 1982.

J. Vredenburg

Donnie A. Huyck

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

March 17, 1982

Lance J. Friedsam
72B Heritage Hill Rd.
New Canaan, CT 06840

Dear Mr. Friedsam:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LANCE J. FRIEDSAM	:	DECISION
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1979.	:	

Petitioner, Lance J. Friedsam, 72 B Heritage Hill Road, New Canaan, Connecticut 06840, 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 1979 (File No. 32830).

Petitioner by a signed statement dated July 28, 1981 waived a hearing and submitted the case for decision based on the record as it exists. After due consideration of the record, the State Tax Commission renders the following decision.

ISSUES

I. Whether the Audit Division properly disallowed the adjustment to income taken by petitioner for alimony payments made.

II. Whether the above disallowance by the Audit Division was in violation of the Privileges and Immunities Clause and the Full Faith and Credit Clause of the Federal Constitution.

III. Whether, in the event alimony is not a proper adjustment to his income, petitioner should be permitted additional exemptions for the year at issue, for his children and his former wife.

FINDINGS OF FACT

1. Petitioner, Lance Friedsam, timely filed a New York State Income Tax Nonresident Return (Form IT-203) for the tax year 1979, on which he claimed alimony payments made to his ex-wife as an adjustment decreasing his gross income by $10,417.00.

2. The Audit Division, by a letter dated August 12, 1980, informed petitioner that his 1979 tax liability had been recomputed to reflect disallowance of the above alimony adjustment and to reflect a redetermination of the formula, based on the number of days worked within and without New York, by which petitioner allocated income to New York. This recomputation resulted in a decrease in the amount of payment credited to petitioner's 1980 Estimated Tax Account.

3. On November 24, 1980, petitioner filed a claim for credit in the amount of $840.00, based on an assertion that the Audit Division incorrectly disallowed petitioner's 1979 alimony adjustment. Petitioner did not dispute the changes made to his allocation formula.

4. By Notice of Disallowance dated February 11, 1981, the Audit Division denied petitioner's claim for credit.

5. Petitioner, Lance Friedsam, timely filed a petition for review of this denial of his claim for credit. Petitioner waived a hearing and has submitted his case for decision by the State Tax Commission based on the record as it exists.

6. Petitioner is now, and was during the period at issue herein, a resident of Connecticut employed by the International Business Machines Corporation (I.B.M.) in White Plains, New York. Compensation paid to petitioner by I.B.M. in 1979 was almost his exclusive source of income.

7. In July 1979, petitioner was divorced from his wife. The Superior Court of Fairfield County, Connecticut, incorporated into the divorce decree a settlement agreement between petitioner and his former wife whereunder petitioner was required to make "unallocated alimony and child support" payments of $2,083.33 per month. The amount of the alimony payments was based upon petitioner's income in comparison to his ex-wife's income.

8. Petitioner's former wife and children were for the period at issue herein also residents of the State of Connecticut.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a resident individual is his Federal adjusted gross income for that year, subject to the modifications specified by section 612 of the Tax Law.

B. That the adjusted gross income of a nonresident individual is defined by section 632(a)(1) of the Tax Law as the net amount of income, gain, loss and deduction entering into his federal adjusted gross income, derived from or connected with New York sources. Income and deductions from New York sources is defined by subdivision (b) of the same section, as follows:

> "(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:
>
> * * *
>
> "(B) a business, trade, profession or occupation carried on in this state."

C. That alimony is not a deduction attributable to petitioner's profession carried on in this state, within the meaning of section 632(b)(1)(B) of the Tax Law. See Matter of Daniel C. Maclean, New York State Tax Commission, May 15, 1981.

D. That the laws of New York are presumed to be constitutionally valid at the administrative level of the New York State Tax Commission.

E. That under sections 636 and 616 of the Tax Law, petitioner may claim the same number of exemptions (subject to the limitation percentage) to which he is entitled for federal income tax purposes in the taxable year. This statutory entitlement is not altered nor influenced by the result reached in Conclusion of Law "C".

F. That the petition of Lance J. Friedsam is denied and the notice of Disallowance dated February 11, 1981 is sustained.

DATED: Albany, New York

MAR 17 1982

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

I DISSENT - SEE ATTACHED MEMORANDUM

COMMISSIONER

I cannot sign a decision against petitioner, Lance Friedsam, because the proposed finding is both inequitable and irrational.

Petitioner is a non-resident, whose income is derived from sources within New York State. Petitioner pays alimony to his former wife, who is also a non-resident. This decision wishes to tax the income, but to disallow the alimony deduction.

If the deduction for alimony were merely one of the itemized deductions which petitioner could make use of on his Federal Schedule A (such as charitable contributions, etc.), petitioner would have no problem. In that case the deduction would be permissible under Tax Law Section 635(c)(1), which allows non-resident taxpayers the same deductions that are available to resident taxpayers, with some exceptions that are not relevant here.

The reason for the taxpayer's problem in this case is the action of the Federal Government in 1977, making the alimony deduction an "adjustment to income" instead of any "itemized deduction." This was done as an "act of mercy" to allow users of the standard deduction to reduce their income by alimony paid. Thus, the deduction for alimony paid was shoved into "adjustments to income" although philosophically it did not really belong there.

"Adjustments to income" were meant to allow a business man-taxpayer to deduct certain costs of doing business, before arriving at his adjusted gross income. Consequently, New York State does not allow a non-resident taxpayer to make adjustments unless such adjustments, under Tax Law Section 632(b)(1), derive from a business, trade, profession, or occupation carried on in this state. The reason for this is obvious. A taxpayer who derived income from a business in New York State could not make adjustments to such income based upon business travel relating to a second job performed only in Connecticut. However, payments of alimony do not fall within the categories contemplated in Tax Law Section 632.

The deduction for alimony payments was more properly an itemized deduction, not directly related to the taxpayer's source of income. The Hearing Officer now wishes to use Section 632 to disallow the taxpayer's use of his alimony deduction, because the alimony is not "attributable to" a business, trade, profession or occupation carried on in New York State. This result is clearly inequitable, and was not intended by Section 632 of the Tax Law. Furthermore, the Federal Government never intended to harm the economic interests of alimony payers, in making the 1977 change. Nor did New York State have such an intent when it conformed to the said Federal change.

As a result of the above, until legislative change is made to Section 632, to reflect the recently broadened categories of "adjustments to income," I propose that the Tax Commission adopt the policy that alimony falls within Section 632(b)(1)(B), since it can be said to be an item attributable to a business, trade, profession or occupation carried on in this state. The basis for this interpretation is that an award of alimony is always based upon the income of the person paying alimony. This is the prime consideration of the Court making such an award. Therefore, the alimony adjustment is attributable to the business, trade or profession carried on in New York State. The instant petitioner, although a Connecticut resident, derives almost all of his income from his New York State job. His payments of alimony are predicated upon the income drawn from that job, i.e., from his business, trade or profession carried on in this state.

There can be no doubt that any other interpretation is both inequitable and irrational, and defeats the general purpose of the alimony deduction.

MAR 17 1982

I DISSENT:

MARK FRIEDLANDER
Commissioner