STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Steven M. Goldring	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 1977.	

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 9th day of November, 1982, he served the within notice of Decision by certified mail upon Steven M. Goldring, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steven M. Goldring
209 Sycamore Dr.
Metairie, LA 70005

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.

J. Vredenburg

Sworn to before me this
9th day of November, 1982.

Annette A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Steven M. Goldring	AFFIDAVIT OF MAILING
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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 9th day of November, 1982, he served the within notice of Decision by certified mail upon Fredric M. Lassman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fredric M. Lassman
37 Fishermans Dr.
Port Washington, NY 11050

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
9th day of November, 1982.

Anne A Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

November 9, 1982

Steven M. Goldring
209 Sycamore Dr.
Metairie, LA 70005

Dear Mr. Goldring:

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
Fredric M. Lassman
37 Fishermans Dr.
Port Washington, NY 11050
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of STEVEN M. GOLDRING for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1977.	DECISION

Petitioner, Steven M. Goldring, 209 Sycamore Drive, Metairie, Louisianna 70005, 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 1977 (File No. 26692).

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 14, 1981 at 9:30 A.M. Petitioner appeared by Fredric M. Lassman, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On March 13, 1979, the Audit Division issued a Statement of Audit Changes to petitioner, Steven M. Goldring, proposing an adjustment increasing petitioner's New York State personal income tax due by $3,761.85. The adjustment was based on the disallowance of the exclusion of $25,504.00 under section 601(c)[1]

[1] Although the Statement of Audit Changes refers to section 601(c) of the Tax Law, it would appear that section 601(a)(2)(C) was intended.

of the Tax Law and the addition of a modification for allocable expenses attributable to items of tax preference of $717.00. On or about March 26, 1979, petitioner filed an amended return which reflected the disallowed exclusion of $25,504.00 and computed the modification for allocable expenses. Petitioner, however, also deducted $18,000.00 in temporary alimony paid as a deduction from gross income. On April 6, 1979, the Audit Division issued to petitioner a Notice of Deficiency asserting $3,761.85 in tax as proposed by the Statement of Audit Changes, plus interest.

2. While the perfected petition of Steven M. Goldring claims that a certain refund and/or credit was handled improperly by the Audit Division, it is impossible to determine from the record herein whether that was the case. The issue at the hearing was confined to whether the Audit Division had properly disallowed the adjustment to income taken by the nonresident petitioner for alimony payments made in 1977.

3. During 1977, petitioner was a resident of Connecticut and a general partner in a New York partnership. The partnership was the major source of his income. Petitioner's former spouse was also a resident of Connecticut, at least up until the filing of her complaint against petitioner for divorce, in April or May of 1977.

4. The judgment of divorce dated June 6, 1978 (subsequent to the year at issue) provided that petitioner was to pay his former wife the sum of $30,000.00 per year in unallocated alimony and child support commencing April 1, 1978. It also provided that in the event petitioner's gross income exceeded $65,000.00 per year, but was less than $75,000.00 per year, petitioner was to pay his former wife 50% of such additional income; and further, that petitioner was to pay his former wife 33 1/3% of such gross income as exceeded $75,000.00 per year but was less than $100,000.00 per year.

5. Petitioner contends that the Audit Division's failure to allow the alimony deduction to nonresidents of New York State, while permitting it for New York residents, is discriminatory and thus violative of section 1 of the 14th Amendment to the United States Constitution. He also maintains that the provision in the judgment of divorce relating to increased alimony for gross income over $65,000.00 (i.e. the 50% and 33 1/3% participation rates) shows the relationship of the alimony to petitioner's partnership distribution.

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 Article 22 of the Tax Law.

B. That the adjusted gross income of a nonresident individual is defined for purposes of Article 22 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. Section 632(a). 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."

The above-quoted language encompasses deductions for such items as entertainment and away-from-home expenses.

C. That for taxable years beginning before January 1, 1977, alimony payments (taxed to the recipient thereof) were treated, under the Internal Revenue Code, as itemized deductions of the obligor spouse. Internal Revenue Code former Section 215. The New York resident who itemized deductions on his

personal income tax return received the full tax advantage of alimony paid. The nonresident who itemized deductions on his New York personal income tax return received the tax advantage of alimony paid to the extent of the limitation percentage.

D. That pursuant to the Tax Reform Act of 1976, the alimony deduction was changed from an itemized deduction to a deduction in determining adjusted gross income. Internal Revenue Code Section 62(13), as added by Pub. L. No. 94-455, 90 Stat. 1520 (1976). The purpose was to make the deduction available to taxpayers who elected the standard deduction, as well as to those who elected to itemize their deductions, H.R. Rep. No. 94-658, 94th Cong., 2nd Sess. 13, reprinted in [1976] U.S. Code Cong. & Ad. News 2908.

By the very definition of New York adjusted gross income the resident obligor spouse receives the benefit for alimony paid.

For purposes of the New York personal income tax, the nonresident can no longer reap any tax benefit for alimony paid.

E. That, in determining whether to award alimony, and the duration and amount of the award, Connecticut (and New York[2]) courts give primary consideration to means and needs: the income, financial resources and earning ability of the obligor spouse; and the needs and independent means of the recipient spouse. Conn. Gen. Stat. Ann. Section 46b-82. deCossy v. deCossy, 172 Conn. 202; Stoner v. Stoner, 163 Conn. 345; Shrager v. Shrager, 144 Conn. 483. Should there occur a substantial change in the circumstances of either party, such as

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[2] N.Y. Domestic Relations Law Section 236. Fomenko v. Fomenko, 50 A.D.2d 712; Lipman v. Lipman, 38 A.D.2d 556; Aronson v. Aronson, 29 A.D.2d 732; Bruce v. Bruce, 275 A.D. 808.

the obligor spouse's loss of employment, the court is authorized to set aside or alter the amount of alimony previously set. Conn. Gen. Stat. Ann. Section 46b-86(a). Conroy v. Conroy, 32 Conn. Sup. 92.

There exists a well-established relationship between the obligor spouse's income and the amount of alimony awarded by the court. However, alimony is not a deduction attributable to petitioner's profession carried on in this state, within the meaning of section 632(b)(1)(B).[3] Petition of Daniel C. MacLean, State Tax Commission, May 15, 1981.

F. That the constitutionality of the laws of New York, such as section 632 of the Tax Law in this instance, is presumed at the administrative level of the State Tax Commission.

G. That the petition of Steven M. Goldring is hereby denied and the Notice of Deficiency is sustained.

DATED: Albany, New York
NOV 09 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

[3] To conclude otherwise might raise the question of whether such amounts are taxable to a nonresident recipient spouse under Article 22.

I cannot sign a decision against petitioner, Steven M. Goldring, 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 the 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.

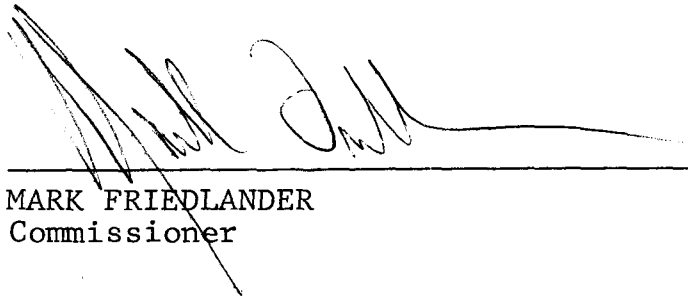
"Adjustments to income" were meant to allow a business man-taxpayer to deduct certain costs of doing business, before arriving at his adjusted gross income. Consequently, New York State does not allow a non-resident taxpayer to make adjustments unless such adjustments, under Tax Law Section 632(b)(1), 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.

I DISSENT:



MARK FRIEDLANDER
Commissioner