

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Barbara Lubin Goldsmith :
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 :
1973. :
_____:

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

Barbara Lubin Goldsmith
655 Park Ave.
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 R. Haglund

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Barbara Lubin Goldsmith :

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 :
1973. :

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 Hirschell E. Levine the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hirschell E. Levine
Eisner & Lubin
250 Park Ave.
New York, NY 10017

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.

Ernie P. Hagelund

J. Vredenburg

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

June 18, 1982

Barbara Lubin Goldsmith
655 Park Ave.
New York, NY 10021

Dear Ms. Goldsmith:

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
Hirschell E. Levine
Eisner & Lubin
250 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BARBARA LUBIN GOLDSMITH	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioner, Barbara Lubin Goldsmith, 655 Park Avenue, 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 1973 (File No. 21639).

Petitioner waived a formal hearing and requested the Tax Commission to issue a decision herein based upon the record as it is presently constituted.

The State Tax Commission hereby renders the following decision.

ISSUE

Whether or not a New York resident may claim on his or her personal income tax return a net operating loss deduction in excess of the amount of the net operating loss deduction claimed by that individual on his or her federal income tax return.

FINDINGS OF FACT

1. Petitioner, Barbara Lubin Goldsmith, sustained a net operating loss for the taxable year ending December 31, 1976 in the amount of \$897,469.00.

2. Petitioner has been since 1973 and still is a resident of the State of New York. She filed a New York State income tax resident return for 1973 and paid a tax of \$28,339.00. Petitioner also filed a New York resident return for 1974 and paid a tax of \$269,179.26.

3. On May 9, 1977, petitioner filed a claim for credit or refund of personal income tax for the year 1973 in the amount of \$28,339.00 on the basis of a carryback of 1976 net operating loss.

4. On or about May 9, 1977, petitioner filed a claim for credit or refund of personal income tax for the year 1974 in the amount of \$83,547.00 based on a carryback of 1976 net operating loss.

5. On November 16, 1977 the Audit Division issued a Voucher For Income Tax Refund (Form IT-111) granting 1973 tax refund in the amount of \$23,359.00 and \$83,547.46 for 1974 plus interest of \$7,765.02 for a total of \$114,671.48. It stated, in part, that:

"The New York net operating loss deduction is the exact same amount as properly allowable for federal income tax purposes. The Federal net operating loss deduction being the amount of loss needed to bring Federal taxable income to zero or the amount of loss available, whichever is less."

6. On February 27, 1978, the Audit Division issued a partial denial of the claim for refund for 1973 disallowing same to the extent of \$4,980.00. Petitioner timely filed a petition with respect thereto.

CONCLUSION OF LAW

A. That section 612(a) of the Tax Law provides in part that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

B. That deviation from Federal adjusted gross income may only be permitted in those limited instances provided by the Legislature in the applicable statute. The New York Tax Law does not permit such deviation with respect to net operating loss carryback. See Matter of Gurney v. Tully, 51 N.Y.2d 818, reversing 67 A.D.2d 303, on the dissenting opinion of Staley, Jr., J. therein.)

C. That the disallowance of a portion of petitioner's net operating loss carryback for 1973 was proper and in accordance with the intent and meaning of section 612(a) of the Tax Law. (Matter of Sheils v. State Tax Commission, determinations of State Tax Commission confirmed by Special Term, Albany Co., opinion John T. Casey, J., 95 Misc. 2d. 605, reversed by Appellate Division, 3rd Dept., 72 A.D.2d 896, reversed by Court of Appeals, 52 N.Y.2d 954. reinstating determination on basis of Matter of Gurney, supra.)

D. That the petition of Barbara Lubin Goldsmith is hereby denied.

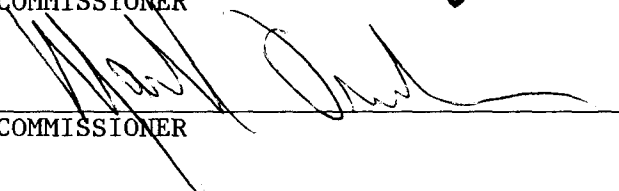
DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER