

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Charles H. Gross  
and Norma S. Gross

:

:

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 Years :  
1967, 1968 & 1969.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Charles H. Gross and Norma S. Gross the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles H. Gross  
and Norma S. Gross  
2 Tulips  
Roslyn Estates, NY 11576

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  
29th day of January, 1982.

*Connie A. Hapgood*

*[Signature]*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Charles H. Gross :  
and Norma S. Gross :

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 Years :  
1967, 1968 & 1969.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Ralph Finerman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ralph Finerman  
Simonoff, Peyser & Citrin  
1515 Broadway  
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  
29th day of January, 1982.

*Annice A. Haglund*

*J. Vredenburg*

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

January 29, 1982

Charles H. Gross  
and Norma S. Gross  
2 Tulips  
Roslyn Estates, NY 11576

Dear Mr. & Mrs. Gross:

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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Ralph Finerman  
Simonoff, Peyser & Citrin  
1515 Broadway  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES H. GROSS and NORMA S. GROSS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1967, 1968 and 1969.	:	

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Petitioners, Charles H. Gross and Norma S. Gross, 32 The Intervale, Roslyn Estates, New York 11576, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1967, 1968 and 1969 (File No. 10635).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 23, 1977 at 1:30 P.M. Petitioners appeared by Ralph Finerman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether, on the basis of a net operating loss carryback from the year 1970, petitioners are entitled to a full refund of New York State personal income tax for the years 1967, 1968 and 1969.

FINDINGS OF FACT

1. In 1970, petitioner, Charles H. Gross, experienced a partnership loss in excess of \$550,000.00.
2. On August 31, 1971, petitioners submitted claims for refund of personal income tax for these years in these amounts:

1967 - \$16,304.29

1968 - \$32,616.36

1969 - \$ 5,126.80

3. By Voucher for Income Tax Refund No. 00101158, the Income Tax Bureau granted a refund of \$12,309.99 for 1967 and \$23,050.72 for 1968. No refund was granted for 1969. The "Explanation of Refund" on the voucher read in pertinent part as follows: "Your claims for refund based on a net operating loss carryback from the year 1970 to the years 1967 and 1968 has been authorized in the adjusted amount computed below. The 1969 claim may not be allowed as the net operating loss deduction is limited to the Federal taxable income, which has been computed as a negative figure."

4. By letter dated January 25, 1972, Louis Etlinger, Chief, Review Unit, Income Tax Bureau, wrote as follows to petitioners' representatives:

"The net operating loss deduction carryback for New York State income tax purposes is the same amount as that allowed for Federal purposes.

"The net operating loss deduction allowed as a carryback may not reduce the Federal taxable income below zero. Therefore, our computation indicates that the Federal taxable income for the year 1967 was \$123,099.86 and for the year 1968, \$164,648.00. There was a negative Federal taxable income for the year 1968 (sic), therefore, no net operating loss deduction can be allowed for the year 1969 and the amount of carryback to 1967 and 1968 is limited to the Federal taxable income."

5. Claims for refund of Federal taxes were approved by the Internal Revenue Service for the years 1967 and 1968. No such claim was filed for the year 1969 since the Federal income tax liability for that year was zero.

#### CONCLUSIONS OF LAW

A. That the amount of net operating loss and the portion thereof allowable as a deduction in each of the carryback years is determined in accordance with the provisions of the Internal Revenue Code. The portion of the net operating loss allowable as a carryback deduction is limited (under

section 172(b)(2) of the Internal Revenue Code) to the amount of the modified taxable income computed thereunder, and this modified taxable income for such a year may not be less than zero. The portions of the net operating loss allowed as deductions in the carryback years were deductions used in recomputing petitioner's Federal adjusted gross income for said years. Therefore, the amounts allowed as carryback deductions for Federal income tax purposes would also be the amounts permitted for New York State income tax purposes within the meaning and intent of Article 22 of the Tax Law. The Tax Law makes no provision which would allow a net operating loss deduction or carryback or carryover deduction, which would exceed the allowance for Federal income tax purposes. (See James H. Sheils et al v. State Tax Commission, 52 N.Y.2d 954, Rev'g 72 A.D.2d 896; Matter of David Berg, State Tax Commission Decision April 17, 1981).

B. That the petition and claims for refund of Charles H. Gross and Norma S. Gross are denied and the Notice of Partial Refund Disallowance dated April 10, 1972 is sustained.

DATED: Albany, New York  
JAN 29 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

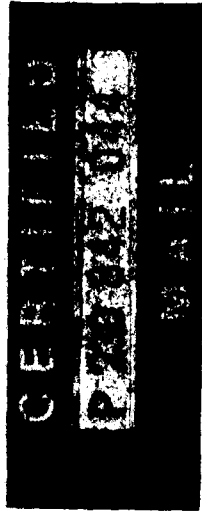
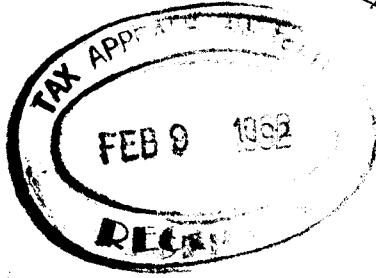
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N. Y. 12227



- ☐ Moved, left no address  
☐ No such number  
☐ Moved, not forwardable  
☒ Addressee unknown
- NEW YORK, N. Y. 10033

*Rec'd 12/27/82*  
Ralph Finerman  
Simonoff, Peysner & Citrin  
1515 Broadway  
New York, NY 10017



*RE*

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

January 29, 1982

Charles H. Gross  
and Norma S. Gross  
2 Tulips  
Roslyn Estates, NY 11576

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Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Ralph Finerman  
Simonoff, Peyser & Citrin  
1515 Broadway  
New York, NY 10017  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
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of	:	
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CHARLES H. GROSS and NORMA S. GROSS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
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B. That the petition and claims for refund of Charles H. Gross and Norma S. Gross are denied and the Notice of Partial Refund Disallowance dated April 10, 1972 is sustained.

DATED: Albany, New York  
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STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

12  
STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Henry M. Gross, Jr. :  
and Catherine E. Gross : 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 20th day of August, 1982, he served the within notice of Decision by certified mail upon Henry M. Gross, Jr., and Catherine E. Gross the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

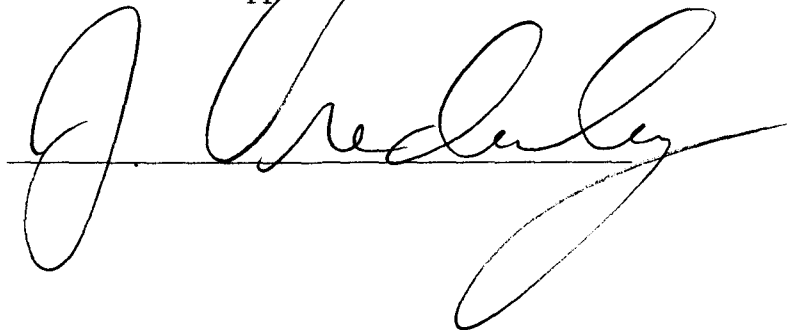
Henry M. Gross, Jr.  
and Catherine E. Gross  
c/o Charles H. Fish  
Arthur Andersen & Co.  
1345 Avenue of the Americas  
New York, NY 10019

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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  
20th day of August, 1982.

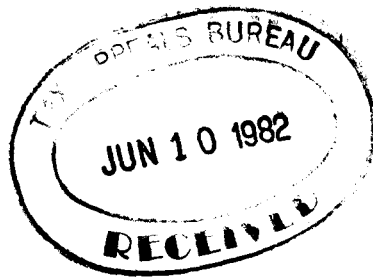




TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

Henry M. Gross, Jr.  
and Catherine E. Gross  
Rogers Lane, P.O. Box 356  
Remsenburg, NY 11960



REQUEST FOR BETTER ADDRESS

Requested by <i>J. Wedderling</i>	Unit Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>6-10-82</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>NL</i>	Date of Petition <i>Fr. Dec. 5-27-82</i>
Name <i>Henry M. Gross, Jr.</i>	
Address <i>and Catherine E. Gross Rogers Lane, P.O. Box 356 Remsenburg, N.Y. 11960</i>	

## Results of search by Files

<input type="checkbox"/> New address:		
<input type="checkbox"/> Same as above, no better address		
<input type="checkbox"/> Other: <i>call Rep</i> <i>139 708 4000</i>	<i>JP living abroad sent to Rep c/o Charles H. Fish Arthur Andersen &amp; Co. 1345 Avenue of the Americas New York, NY 10019</i>	
Searched by <i>New York, NY 10019</i>	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER