

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Arthur & Sylvia Rabb	:	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	:	
1974.	:	

State of New York
County of Albany

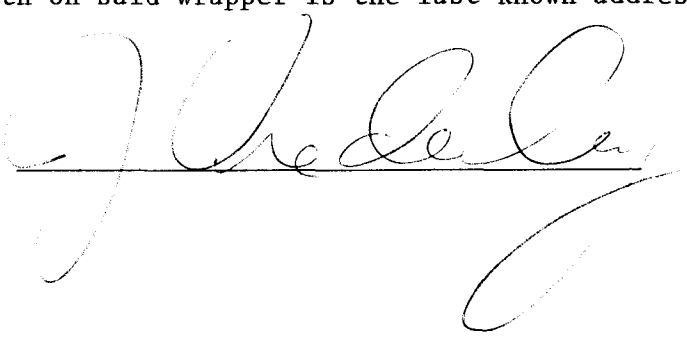
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of December, 1982, he served the within notice of Decision by certified mail upon Arthur & Sylvia Rabb, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur & Sylvia Rabb
17 Meadow Ridge Lane
Old Brookville, NY 11545

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
24th day of December, 1982.


Kathy Plapp
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur & Sylvia Rabb :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
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State of New York
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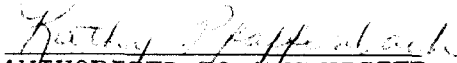
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of December, 1982, he served the within notice of Decision by certified mail upon Joyce T. Gwadz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joyce T. Gwadz
Dow, Lohnes & Albertson
1225 Connecticut Ave.
Washington, DC 20036

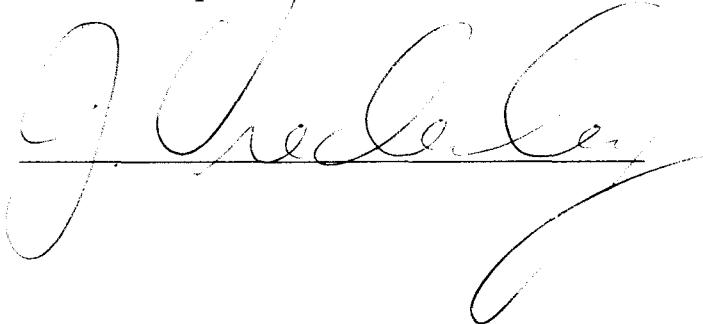
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
24th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 24, 1982

Arthur & Sylvia Rabb
17 Meadow Ridge Lane
Old Brookville, NY 11545

Dear Mr. & Mrs. Rabb:

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
Joyce T. Gwadz
Dow, Lohnes & Albertson
1225 Connecticut Ave.
Washington, DC 20036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARTHUR RABB and SYLVIA RABB	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, Arthur Rabb and Sylvia Rabb, 17 Meadow Ridge Lane, Old Brookville, New York 11545, 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 1974 (File No. 21972).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 16, 1981 at 10:45 A.M. Petitioners appeared by Dow, Lohnes & Albertson (Joyce T. Gwadz, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the long-term capital gain realized on a sale of stock in 1974 arising from a contract entered into on January 11, 1966 with subsequent amendments is an item of tax preference subject to New York State minimum income tax.

FINDINGS OF FACT

1. On January 11, 1966, petitioner Arthur Rabb entered into an agreement with Cox Broadcasting Corporation ("Cox") under which Cox had the option to buy and Arthur Rabb had the option to sell Arthur Rabb's stock in United Technical Publications, Inc. The date for exercising the foregoing options was extended

by subsequent agreements. On December 30, 1974 Arthur Rabb sold his stock in United Technical Publications, Inc. pursuant to the contract dated January 11, 1966.

2. Petitioners, Arthur Rabb and Sylvia Rabb, filed separately on a New York State Combined Income Tax Return for 1974. On this return petitioners reported the sale of stock in United Technical Publications, Inc. for \$1,860,000.00. This resulted in a gain of \$1,859,339.00 subject to capital gains treatment. Petitioners determined the amount of tax due utilizing the alternative tax provided for by section 1201 of the Internal Revenue Code as it then existed. No minimum tax return was filed.

3. On March 27, 1978 the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit Changes. On the Statement of Audit Changes, the Audit Division concluded that since separate returns were filed, separate computations of gains and losses had to be computed for each petitioner. The Audit Division's computations resulted in a long-term capital gain of \$720,932.00 for Arthur Rabb and a long-term capital loss of \$500.00 for Sylvia Rabb. Petitioners' asserted tax liability was then recomputed on a joint basis since this resulted in lower tax liability. The Audit Division determined that the portion of the long-term capital gain which was not subject to New York State Personal Income Tax was an item of tax preference that was subject to New York State minimum income tax. The Audit Division recomputed petitioners' joint capital gain deduction to be \$705,918.00. Twenty percent of this amount, \$141,184.00, was deducted to arrive at New York items of tax preference. The Audit Division made a modification for allocable expenses attributable to items of tax preference in accordance with section 615(c)(4) of the Tax Law. Said modification allocated \$15,321.00 of the \$41,182.00 of

allocable expenses, as being attributable to the items of tax preference. The foregoing resulted in a New York personal income tax of \$135,308.90, plus New York minimum tax of \$25,465.51, for a total additional tax due of \$160,774.41. The Audit Division then subtracted the New York tax previously paid of \$132,412.00 to arrive at the amount of additional tax due of \$28,362.41, plus interest of \$7,107.05, for a total of \$35,469.46.

4. In a letter dated March 31, 1978, the Internal Revenue Service advised petitioners that an examination of their 1974 tax returns showed that no change in the tax reported was required and that their returns were accepted as filed.

CONCLUSIONS OF LAW

A. That subdivision (a) of section 622 of the Tax Law provides in part that "[t]he New York minimum taxable income of a resident individual...shall be the sum of the items of tax preference, as described in subdivision (b) of ..." section 622 of the Tax Law.

B. That in computing New York minimum taxable income "...the term 'items of tax preference' shall mean the federal items of tax preference, as defined in the laws of the United States, of a resident individual...for the taxable year with ..." certain modifications (Tax Law §622(b)).

C. That the law in effect at the time the payment is received determines the nature of the gain and the rate of tax to be applied (see Matter of Richard D. Rosenblatt and Louis Rosenblatt, State Tax Commission, March 14, 1980; determination confirmed, Rosenblatt v. New York State Tax Comm., 106 Misc.2d 490, 491).

D. That the Internal Revenue Code §57 provided, in pertinent part:

"§ 57. Items of tax preference

(a) In general. -- For purposes of this part, the items of tax preference are --

...

(9) Capital gains. --

(A) Individuals. -- In the case of a taxpayer other than a corporation, an amount equal to one-half of the amount by which the net long-term capital gain exceeds the net short-term capital loss for the taxable year."

E. That the alternative tax computation of I.R.C. §1201, is solely a matter of tax computation and not a method of computing taxable income or an item of tax preference. Additionally, I.R.C. §57(a)(9)(A) only includes as an item of tax preference that portion of the capital gain which is not treated as ordinary income under I.R.C §1202.

F. That petitioner's long term capital gains deduction is an item of tax subject to minimum income tax within the meaning and intent of I.R.C. §1202, §57(a)(9)(A), and Tax Law §622(b).

G. That assuming, without deciding, that the Internal Revenue Service decided the issues raised herein by the letter noted in Finding of Fact "4", the State Tax Commission is not bound by a federal determination relating to issues raised before it (e.g. Matter of Max L. Petschek and Christine Petschek, State Tax Commission, October 3, 1980).

H. That the petition of Arthur Rabb and Sylvia Rabb is hereby denied and the Notice of Deficiency dated March 27, 1978 is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York

DEC 24 1982

STATE TAX COMMISSION

Robert B. Bland
ACTIVE PRESIDENT

Francis R. Koenig
COMMISSIONER

William J. Hall
COMMISSIONER

PI
STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur & Sylvia Rabb :
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 :
1974. :
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of January, 1983, she served the within notice of Decision by certified mail upon Arthur & Sylvia Rabb, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur & Sylvia Rabb
5702 Melaleuca Dr.
Tamarac, FL 33330

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
14th day of January, 1983.

Kathy Pfaffenbach

Conie A. Haglund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

TA 26 (9-79)

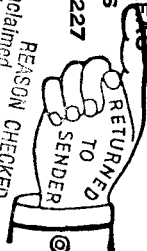
STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



REASON CHECKED
Unclaimed _____
Attempted - Not known _____
Insufficient Address _____
No such street _____
No such office in state _____
Do not remail in this envelope _____

Arthur & Sylvia Rabb
17 Meadow Ridge Lane
Old Brookville, NY 11545

☒ Moved, left no address
☒ No such number
☐ Moved, not forwardable
☐ Addressee unknown



CLAIM CHECK
NO.

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

~~971316~~

☐ HOLD

DATE

11/19/83

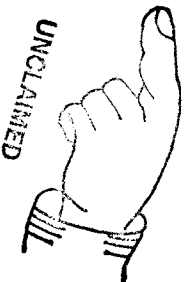
1ST NOTICE

2ND NOTICE

RETURN

125

Detached from
PS Form 3848-A
Oct. 1980



Arthur & Sylvia Rabb
5702 Melaleuca Dr.
Tamarac FL 33330

CERTIFIED

P 278 401 667

MAIL

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

~~December 24, 1982~~

*Remailed
Jan. 14, 1983*

Arthur & Sylvia Rabb
~~17 Meadow Ridge Lane~~
~~Old Brookville, NY 11545~~

*5702 Melaleuca Dr.
Tamarac Fl. 33330*

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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
Joyce T. Gwadz
Dow, Lohnes & Albertson
1225 Connecticut Ave.
Washington, DC 20036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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ARTHUR RABB and SYLVIA RABB	:	DECISION
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B. That in computing New York minimum taxable income "...the term 'items of tax preference' shall mean the federal items of tax preference, as defined in the laws of the United States, of a resident individual...for the taxable year with ..." certain modifications (Tax Law §622(b)).

C. That the law in effect at the time the payment is received determines the nature of the gain and the rate of tax to be applied (see Matter of Richard D. Rosenblatt and Louis Rosenblatt, State Tax Commission, March 14, 1980; determination confirmed, Rosenblatt v. New York State Tax Comm., 106 Misc.2d 490, 491).

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G. That assuming, without deciding, that the Internal Revenue Service decided the issues raised herein by the letter noted in Finding of Fact "4", the State Tax Commission is not bound by a federal determination relating to issues raised before it (e.g. Matter of Max L. Petschek and Christine Petschek, State Tax Commission, October 3, 1980).

H. That the petition of Arthur Rabb and Sylvia Rabb is hereby denied and the Notice of Deficiency dated March 27, 1978 is sustained, together with such interest as may be lawfully due.

DATED: Albany, -New York

STATE TAX COMMISSION

remanded
~~DEC 24 1982~~
JAN 14 1983

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER