

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dwight W. & Marguerite P. Winkelman :
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 :
1976. :

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 5th day of March, 1982, he served the within notice of Decision by certified mail upon Dwight W. & Marguerite P. Winkelman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dwight W. & Marguerite P. Winkelman
10005 Lewis Cove
Delray Beach, FL 33444

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
5th day of March, 1982.

Constance A. Hayden

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dwight W. & Marguerite P. Winkelman :
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 :
1976 :

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 5th day of March, 1982, he served the within notice of Decision by certified mail upon Kevin Fahey the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kevin Fahey
Coopers & Lybrand
One Lincoln Center
Syracuse, NY 13202

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
5th day of March, 1982.

Annie G. Hapland

J. J. Vredenburg

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

March 5, 1982

Dwight W. & Marguerite P. Winkelman
10005 Lewis Cove
Delray Beach, FL 33444

Dear Mr. & Mrs. Winkelman:

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
Kevin Fahey
Coopers & Lybrand
One Lincoln Center
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DWIGHT W. WINKELMAN and MARGUERITE P. WINKELMAN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1976. :

Petitioners, Dwight W. Winkelman and Marguerite P. Winkelman, 1005 Lewis Cove, Delray Beach, Florida 33444, 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 1976 (File No. 26083).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on April 28, 1981 at 11:00 A.M. Petitioners appeared by John A. Thorne, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the Federal item of tax preference for excess itemized deductions should be reduced and/or modified by a portion of the New York State income taxes included therein in arriving at New York items of tax preference.

FINDINGS OF FACT

1. On June 13, 1977, petitioners, Dwight W. Winkelman and Marguerite P. Winkelman, filed a New York State combined income tax resident return for tax year 1976.

2. On September 15, 1978, the Audit Division issued a Notice of Deficiency to petitioners asserting additional income tax due for 1976 in the amount of

\$5,617.00, plus interest of \$677.58, for a total of \$6,294.58. The Statement of Audit Changes explaining this Notice of Deficiency stated that the New York Tax Law contains no provision for modifying the Federal items of tax preference in connection with excess itemized deductions.

3. Petitioners' Federal items of tax preference for 1976 included depletion, capital gains, and excess itemized deductions. Petitioners argue that Federal excess itemized deductions of \$45,222.00 should be reduced by the amount of New York State income taxes deducted as itemized deductions (\$45,635.00) or in this case limited to the amount of \$45,222.00 thereby eliminating excess itemized deductions from New York items of tax preference.

CONCLUSIONS OF LAW

A. That section 622 of the Tax Law, in pertinent part, provides:

"New York minimum taxable income of resident individual. --

(a) The New York minimum taxable income of a resident individual... shall be the sum of the items of tax preference, as described in subsection (b) of this section...

* * *

"(b) For purposes of this article, the term 'items of tax preference' shall mean the federal items of tax preference, as defined by the laws of the United States, of a resident individual,...for the taxable year..."

B. That section 57 of the Internal Revenue Code, in pertinent part, provides:

"Section 57. Items of Tax Preference.

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

(1) Excess Itemized Deductions. -- An amount equal to the excess itemized deductions for the taxable year (as determined under subsection (b)).

* * *

(b) Excess Itemized Deductions. --

(1) In General. -- For purposes of paragraph (1) of subsection (a), the amount of the excess itemized deductions for any taxable year is the amount by which the sum of the deductions for the taxable year other than --

- (A) deductions allowable in arriving at adjusted gross income,
 - (B) the standard deduction provided by section 141,
 - (C) the deduction for personal exemptions provided by section 151,
 - (D) the deduction for medical, dental, etc. expenses provided in section 213, and
 - (E) the deduction for casualty losses described in section 165(c)(3),
- exceeds 60 percent (but does not exceed 100 percent) of the taxpayer's adjusted gross income for the taxable year."

C. That in 1976 there was no provision in the Tax Law which allowed a portion of New York State income taxes to be deducted from federal items of tax preference in arriving at New York items of tax preference. Section 622(b)(5) of the Tax Law, added by L. 1980, Ch.669, effective June 30, 1980, and applicable to taxable years beginning after December 31, 1979, provides for the reduction of adjusted itemized deductions by a portion of income taxes includable therein. Section 622(b)(5) is not retroactive to 1976.

Accordingly, for the period at issue herein, petitioners improperly calculated their New York items of tax preference subject to New York minimum tax.

D. That the petition of Dwight W. Winkelman and Marguerite P. Winkelman is denied and the Notice of Deficiency issued on September 15, 1978 is sustained together with any additional interest that may be owing.

DATED: Albany, New York

MAR 05 1982

STATE TAX COMMISSION

James W. Telle
PRESIDENT

Francis P. Koenig
COMMISSIONER

[Signature]
COMMISSIONER