

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Richard W. & Joyce R. Allphin : 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.

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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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Richard W. & Joyce R. Allphin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard W. & Joyce R. Allphin  
11 Sinawoy Rd.  
Cos Cob, CT 06807

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 January, 1983.

Kathy Pfaffenbach

Annice A. Hugland

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

January 24, 1983

Richard W. & Joyce R. Allphin  
11 Sinawoy Rd.  
Cos Cob, CT 06807

Dear Mr. & Mrs. Allphin:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
RICHARD W. ALLPHIN and JOYCE R. ALLPHIN  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Year 1977.

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DECISION

Petitioners, Richard W. Allphin and Joyce R. Allphin, 11 Sinawoy Road, Cos Cob, Connecticut 06807, 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. 28389).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1981 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether alimony payments made by petitioner Richard W. Allphin, a nonresident, is allowed as a deduction against his total reported income for the subject year.

II. Whether New York State's Tax Law regarding alimony deductions for nonresident taxpayers is discriminatory and results in a violation of petitioner's federal constitutional rights.

FINDINGS OF FACT

1. Petitioners Richard W. Allphin and Joyce R. Allphin, his wife filed an amended New York State income tax nonresident return for 1977 on which they computed their tax separately.

The amended return showed a tax overpayment of \$3,026.00, less an amount previously refunded of \$1,149.00 for a net refund of \$1,877.00. This refund was based on a deduction for alimony of \$13,000.00 paid by petitioner Richard W. Allphin, which was not claimed as a deduction on his original return.

2. On June 12, 1979, the Audit Division issued a Statement of Refund Adjustment which partially disallowed the petitioners claim by \$1,576.85, thereby reducing the refund to \$300.15. The Statement of Refund Adjustment held that alimony payments claimed by nonresident taxpayers is not an allowable adjustment against New York income. A formal Notice of Disallowance indicating the above amounts was issued on August 27, 1979.

3. Petitioner argued that had he been a New York domiciliary, then the alimony he paid to his wife would be allowed as a deduction against his reported income. Therefore, he maintained the New York State Tax Law is discriminatory and results in a violation of his federal constitutional rights.

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 the Tax Law.

B. That the adjusted gross income of a nonresident individual is defined by section 632(a)(1) 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. 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."

C. That alimony is not a deduction attributable to petitioner's profession carried on in this state, within the meaning of section 632(b)(1)(B) of the Tax Law. See Matter of Daniel C. Maclean, New York State Commission, May 15, 1981.

D. That the constitutionality of the laws of the State of New York are presumed by the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that the relevant sections of the law are constitutional to the extent that they relate to the imposition of income tax liability on the petitioners.

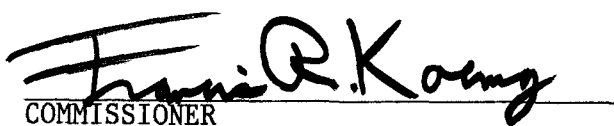
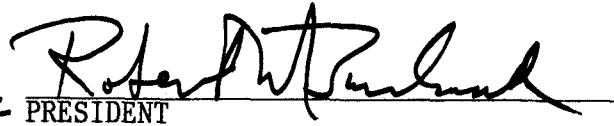
E. That the petition of Richard W. Allphin and Joyce R. Allphin is denied and the Notice of Disallowance dated August 27, 1979 is sustained.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION

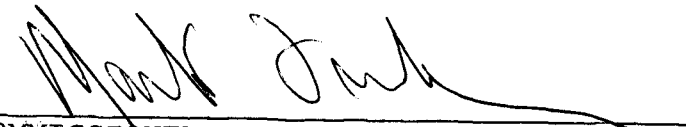
ACTING PRESIDENT



COMMISSIONER

COMMISSIONER

Commissioner Friedlander dissents in accordance with his appended dissents in the Matter of Lance J. Friedsam and in the Matter of Steven M. Goldring dated March 17, 1982 and November 9, 1982, respectively.



COMMISSIONER