

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jacob & Faye Burns :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Year 1977. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Jacob & Faye Burns, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jacob & Faye Burns
35 Park Ave.
New York, NY 10016

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
27th day of May, 1983.

David Parchuck

Connie O'Donnell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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of :
Jacob & Faye Burns :
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Law and Chapter 46, Title T of the Administrative :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Charles Sheldon the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles Sheldon
Seidman & Seidman
15 Columbus Circle
New York, NY 10023

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
27th day of May, 1983.

David Parchuck

Quinn A. Hegeland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Jacob & Faye Burns
35 Park Ave.
New York, NY 10016

Dear Mr. & Mrs. Burns:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Charles Sheldon
Seidman & Seidman
15 Columbus Circle
New York, NY 10023
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACOB and FAYE BURNS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Year 1977.	:	

Petitioners, Jacob and Faye Burns, 35 Park Avenue, New York, New York 10016, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File Nos. 34237 and 34767).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on November 30, 1982 at 3:00 P.M. Petitioners appeared by Seidman & Seidman (Charles S. Sheldon, C.P.A.). The Audit Division appeared by Paul B. Coburn, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. Petitioners, Jacob and Faye Burns, filed separate New York State Income Tax Resident returns on a combined form for the taxable year 1977.

2. On April 1, 1981 the Audit Division issued a Notice of Deficiency against petitioner Jacob Burns in the amount of \$3,413.93 plus penalty and interest of \$1,150.11 for a total due of \$4,564.04 for the year 1977. On the same date the Audit Division issued a Notice of Deficiency against petitioner Faye Burns in the amount of \$2,074.19 plus penalty and interest of \$518.75 for a total due of \$2,592.94 for the year 1977. A Statement of Audit Changes issued February 9, 1981 explained that the New York Tax Law in effect in 1977 contained no provision for excluding state income taxes from itemized deductions for purposes of computing adjusted itemized deductions reportable as items of tax preference.

3. Petitioners' federal items of tax preference for 1977 included adjusted itemized deductions. In computing their New York State and City minimum income taxes on items of tax preference, petitioners reduced the federal itemized deductions by the amount of New York State and City income taxes taken as federal deductions.

4. The Audit Division argued that in computing New York minimum income tax, all federal items of tax preference, with certain modifications not herein applicable, must be included. Petitioners, citing Minnesota law, argued that there is a tax benefit derived from use of state income taxes as federal itemized deductions and, therefore, such taxes should be included as tax preference items for federal purposes. However, since New York State income taxes are not deductible as New York State itemized deductions, petitioner maintained that such taxes provided no New York State tax benefit and, therefore, should not be included as New York items of tax preference. Petitioner argued that New York should follow the Minnesota tax benefit rule since the statutes of both states were supposedly the same.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified all reference to sections of Article 22 shall be deemed references to the corresponding sections of Chapter 46, Title T.

B. 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..."

C. 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) Adjusted Itemized Deductions. -- An amount equal to the adjusted itemized deductions for the taxable year [as determined under subsection (b)].

* * *

(b) Adjusted Itemized Deductions. -

(1) In General. -- For purposes of Paragraph (1) of subsection (a), the amount of the adjusted 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 deduction for personal exemptions provided by section 151,
- (C) the deduction for medical, dental, etc. expenses provided by section 213, and
- (D) 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."

D. That in 1977 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 1977.

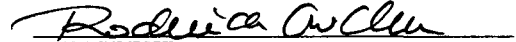
E. That petitioners' reliance on Minnesota law is misplaced. The Minnesota minimum tax statute specifically incorporates by reference the federal tax benefit rule and, moreover, specifically excludes Minnesota income taxes paid from excess itemized deductions for tax preference purposes (Minn. Stat. §290.091). The New York statute cited in Conclusion of Law "A" makes no reference to the federal tax benefit rule and makes no provision for exclusion of state taxes from items of tax preference and, therefore, the two statutes are not similar and Minnesota case law interpreting its statute would not be valid authority for interpretation of the New York statute.

F. That the petition of Jacob and Faye Burns is denied and the notices of deficiency issued April 1, 1981 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER