

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
The Estate of Joel Dean	:	
Jurrien Dean, Executor	:	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


Connie Hagelund, 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 8th day of July, 1983, she served the within notice of Decision by certified mail upon The Estate of Joel Dean, Jurrien Dean, Executor, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Estate of Joel Dean
Jurrien Dean, Executor
4549 S. Chelsea Lane
Bethesda, MD 20014

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
8th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
The Estate of Joel Dean	:	
Jurrien Dean, Executor	:	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

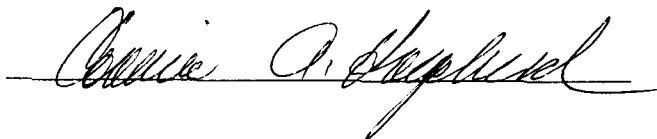
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Robert Simon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Simon
Eisner & Lubin
250 Park Ave.
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
8th day of July, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 8, 1983

The Estate of Joel Dean
Jurrien Dean, Executor
4549 S. Chelsea Lane
Bethesda, MD 20014

Dear Mrs. Dean:

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
Robert Simon
Eisner & Lubin
250 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THE ESTATE OF JOEL DEAN,	:	DECISION
JURRIEN DEAN, EXECUTOR	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

Petitioner, The Estate of Joel Dean, Jurrien Dean, Executor, 4549 South Chelsea Lane, Bethesda, Maryland, 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. 29548).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1981 at 11:30 A.M. Petitioner appeared by Robert Simon, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

FINDINGS OF FACT

Whether the petitioner may have a difference in basis on the sale of obligations, of political subdivisions without the state, caused by amortization of discount; and, if not, can there be a correction of this amortization on closed years.

FINDINGS OF FACT

1. Petitioner Joel Dean filed a New York State Income Tax Resident Return for 1976 on which he deducted from federal adjusted gross income \$2,530.00. This amount represented the difference in basis on the sale of obligations of political subdivisions without the state.

2. On March 3, 1980, the Audit Division issued a Notice of Deficiency against petitioner for 1976, asserting additional personal income tax of \$484.93, plus interest of \$118.78 for a total due of \$603.71. This notice was issued on the grounds that the capital gain reportable by petitioner for New York State purposes must be the same as the capital gain for Federal purposes, and that there is no statutory authority for a difference in Federal and State basis. The Audit Division also made adjustments to petitioner's minimum income tax and modification for allocable expenses based on the disallowance of the difference in Federal and State basis.

3. In January 1970, petitioner Joel Dean purchased the following municipal bonds: Hancock, Kentucky; New Madrid, Missouri and Winchester, Kentucky. All three were purchased at a discount. The petitioner amortized the discount and included such amortization with other amortized municipal bond discounts and premiums and reported a net figure as municipal bond interest for New York State income tax purposes for each of the years 1970 through 1976. These bonds were subsequently sold by a partnership which received them as a partnership contribution from the petitioner. The accumulated amortization thereon was \$6,448.05. The \$2,530.00 represents sixty percent of the long term capital gain of the petitioner's share of the adjusted basis of the bonds.

4. The Audit Division took the position that there is no modification in section 612(c) of the Tax Law to reduce the Federal adjusted gross income by the difference in the New York adjusted basis caused by the amortization of the bonds. The Audit Division further took the position that the treatment of amortizing the bonds for the years 1970 through 1976 could not be changed since these taxable years were closed by the statute of limitation.

5. The petitioner took the position that the capital gains adjustment made on his 1976 New York State income tax return is correct and the proposed deficiency should be abated. That, if his accounting method is determined to be incorrect, then corrective adjustments in petitioner's prior New York State income tax returns should be made, eliminating from income the amortization of discounts, and appropriate refunds with interest should be made.

CONCLUSIONS OF LAW

A. That section 612 of the Tax Law does not provide for a modification for a difference in basis, on bonds that have been amortized, which is subject to tax under Article 22 of the Tax Law but exempt from Federal income tax. Therefore, the adjustment of \$2,530.00 made by the petitioner is disallowed.

B. That, under section 697(d) of the Tax Law, "[w]here no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller."

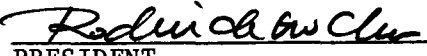
C. That since it would be necessary to inquire into the underlying facts to determine that bond discounts applicable to the municipal bonds sold by petitioner in 1976 were erroneously included in income for the years 1970 through 1975, a question of fact is involved within the meaning and intent of section 697(d) of the Tax Law. Accordingly, it is inappropriate to apply section 697(d) to the matter at hand.


D. That the petition of The Estate of Joel Dean and the refunds requested for the years 1970 through 1975 are denied and the Notice of Deficiency dated March 3, 1980 is hereby sustained.

DATED: Albany, New York

JUL 08 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER