

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joel S. & Anne B. Ehrenkranz :
for Redetermination of a Deficiency or for Refund :
of New York State 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 Years 1977 and 1978. :
_____ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Joel S. & Anne B. Ehrenkranz, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joel S. & Anne B. Ehrenkranz
4 E. 72nd St.
New York, NY 10021

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of December, 1983.

David Parchuck

James A. [Signature]
pursuant to Tax Law section 174

Authorized to administer oaths

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

Authorized to administer oaths

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

December 20, 1983

Joel S. & Anne B. Ehrenkranz
4 E. 72nd St.
New York, NY 10021

Dear Mr. & Mrs. Ehrenkranz:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Marvin Ringer
Ehrenkranz, Ehrenkranz & Schultz
375 Park Ave.
New York, NY 10152
Taxing Bureau's Representative

STATE TAX COMMISSION

Whether petitioner Joel S. Ehrenkranz properly excluded his New York State and New York City personal income taxes from items of tax preference for purposes of determining New York State and New York City minimum income taxes for the years 1977 and 1978.

FINDINGS OF FACT

1. Petitioners, Joel S. Ehrenkranz and his wife, Anne B. Ehrenkranz,¹ filed separately on a combined New York State Income Tax Resident Return for 1977. On this return, Mr. Ehrenkranz reported all of the couple's New York itemized deductions in the amount of \$68,088.00 against his income. A New York Minimum Income Tax Computation Schedule was also filed by Mr. Ehrenkranz, on which he subtracted New York State and local income taxes in determining his total items of tax preference. As a result, Mr. Ehrenkranz reported New York State minimum income tax due of \$23,245.00 and New York City minimum income tax due of \$9,685.00.

2. Petitioners also filed separately on a combined New York State Income Tax Resident Return for 1978. On this return Mr. Ehrenkranz reported all of the couple's New York itemized deductions in the amount of \$165,033.00 against his income. A New York Minimum Income Tax Computation Schedule was also filed by Mr. Ehrenkranz and again, Mr. Ehrenkranz completed the minimum income tax computation scheduled by subtracting New York State and local income taxes in determining his total items of tax preference. Consequently, Mr. Ehrenkranz reported New York State minimum income tax due of \$24,461.00 and New York City minimum income tax due of \$10,192.00.

3. On July 23, 1981 the Audit Division issued a Notice of Deficiency to petitioner Joel S. Ehrenkranz asserting a deficiency of New York State and New

¹ Although a petition was filed on behalf of Joel S. and Anne B. Ehrenkranz, the Notice of Deficiency, as noted in Finding of Fact 3, was issued to Joel S. Ehrenkranz only.

York City personal income tax for the years 1977 and 1978 in the amount of \$15,094.71, penalty of \$1,964.61² and interest of \$1,632.67, for a total amount due of \$18,691.99. To the extent at issue herein, the Statement of Personal Income Tax Audit Changes and attachments which were issued for each year in issue, explained that the items of tax preference reportable to New York are the same as those which were reported on petitioners' federal returns.

CONCLUSIONS OF LAW

A. That for purposes of the New York State personal income tax and the New York City personal income tax, the minimum taxable income of a resident individual is defined as "the sum of the items of tax preference", reduced by certain amounts (Tax Law §622(a); Title T 46-122.0(a)).³ The term "items of tax preference" means "...the federal items of tax preference, as defined in the laws of the United States, of a resident individual..." with certain modifications (Tax Law §622(b); Title T 46-122.0(b)).

B. That, during the periods in issue, section 57 of the Internal Revenue Code provided in pertinent part:

"§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

² Although the Notice of Deficiency showed a penalty, no penalty was asserted. The amount shown as penalty was actually part of the interest.

³ References to Title T are to the Administrative Code of the City of New York.

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."

C. That the petitioner Joel S. Ehrenkranz properly included New York State and local income taxes in determining his Federal items of tax preference since these amounts were allowed as an itemized deduction for Federal income tax purposes [Internal Revenue Code §57(b)(1); 164(a)(3)].

D. That during the periods in issue section 58(h) of the Internal Revenue Code provided:

"Regulations to include tax benefit rule. -- The Secretary shall prescribe regulations under which items of tax preference shall be properly adjusted where the tax treatment giving rise to such items will not result in the reduction of the taxpayer's tax under this subtitle for any taxable years."

No regulations have been promulgated by the Secretary pursuant to section 58(h) of the Internal Revenue Code.

E. That no adjustment for Federal income tax purposes would be made for New York State and local income taxes under section 58 of the Internal Revenue Code since the tax treatment of those items resulted in a reduction of petitioner's tax.

F. That during the periods in issue neither the New York State Tax Law nor the Administrative Code of the City of New York contained a provision which permitted the deduction of any portion of New York State and local income taxes from Federal items of tax preference to determine New York State and New York City items of tax preference. In recognition of this omission, the Legislature enacted section 622(b)(5) of the Tax Law and section T 46-122.0(b)(5) of the Administrative Code of the City of New York (Governor's Bill Jacket, L. 1980, C. 669). These sections, which were added by Chapter 669 of the Laws of 1980, effective June 30, 1980, and applicable to taxable years beginning after December 31, 1979, provide for the reduction of adjusted itemized deductions by a portion of income taxes includible therein. Neither section 622(b)(5) of the Tax Law nor section T 46-122.0(b)(5) of the Administrative Code of the City of New York is retroactive to the periods at issue (Matter of Robert G. Goelet and Alexandra C. Goelet, State Tax Commission, May 6, 1983). Accordingly, petitioner Joel S. Ehrenkranz improperly calculated his New York State and New York City minimum income tax (Matter of Robert G. Goelet and Alexandra C. Goelet, supra).

G. That the petition of Joel S. and Anne B. Ehrenkranz is denied.

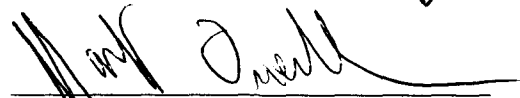
DATED: Albany, New York

STATE TAX COMMISSION

DEC 20 1983


PRESIDENT


COMMISSIONER


COMMISSIONER