

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Leon Fried and Emma Fried :
for Redetermination of a Deficiency or for Refund :
of Personal Income Taxes under Articles 22 and 30 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Israel Fried :
for Redetermination of a Deficiency or for Refund :
of Personal Income Taxes under Articles 22 and 30 :
of the Tax Law for the Year 1976. :

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 Israel Fried, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Israel Fried
972 E. 14th St.
Brooklyn, NY 11230

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

William A. Delaney
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Israel Fried
972 E. 14th St.
Brooklyn, NY 11230

Dear Mr. Fried:

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 & 1312 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
Solomon Fried
100 Ocean Parkway
Brooklyn, NY 11218
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Leon Fried and Emma Fried :
for Redetermination of a Deficiency or for Refund :
of Personal Income Taxes under Articles 22 and 30 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Israel Fried :
for Redetermination of a Deficiency or for Refund :
of Personal Income Taxes under Articles 22 and 30 :
of the Tax Law for the Year 1976. :

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 Estate of Leon Fried and Emma Fried, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Leon Fried
and Emma Fried
David Fried, Executor
548 Cedarwood Dr.
Cedarhurst, NY 11516

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

William A. Haymond

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Leon Fried and Emma Fried :
for Redetermination of a Deficiency or for Refund :
of Personal Income Taxes under Articles 22 and 30 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Israel Fried :
for Redetermination of a Deficiency or for Refund :
of Personal Income Taxes under Articles 22 and 30 :
of the Tax Law for the Year 1976. :

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 Solomon Fried the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Solomon Fried
100 Ocean Parkway
Brooklyn, NY 11218

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

Constance A. Hargrave

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Estate of Leon Fried
and Emma Fried
David Fried, Executor
548 Cedarwood Dr.
Cedarhurst, NY 11516

Dear Mrs. Fried:

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 & 1312 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
Solomon Fried
100 Ocean Parkway
Brooklyn, NY 11218
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ESTATE OF LEON FRIED AND EMMA FRIED
for Redetermination of a Deficiency or for
Refund of Personal Income Taxes under Articles
22 and 30 of the Tax Law for the Year 1976.

DECISION

In the Matter of the Petition
of
ISRAEL FRIED
for Redetermination of a Deficiency or for
Refund of Personal Income Taxes under Articles
22 and 30 of the Tax Law for the Year 1976.

Petitioners, Estate of Leon Fried, David Fried, Executor, and Emma Fried, 548 Cedarwood Drive, Cedarhurst, New York 11516, and Israel Fried, 972 East 14th Street, Brooklyn, New York 11230, filed petitions for redetermination of deficiencies or for refunds of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File Nos. 30321 and 30421).

A consolidated small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 15, 1982 at 1:15 P.M., with final briefs to be submitted by September 30, 1982. Petitioners appeared by Solomon Fried. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUES

I. Whether petitioners, in computing capital gains as an item of tax preference for minimum income tax purposes, may use a higher New York State and New York City basis for property giving rise to such gains than that used for Federal purposes.

II. Whether petitioners, in computing capital gains for New York City personal income tax purposes, may use a higher basis for property giving rise to such gains than that used for New York State personal income tax purposes.

III. Whether petitioner, Israel Fried, may exclude certain capital gains from income in computing New York City personal income and minimum income taxes.

FINDINGS OF FACT

1. Leon Fried (now deceased) and Emma Fried filed a joint New York State Income Tax Resident Return (with New York City Personal Income Tax) for the year 1976 whereon they reported a net capital gain of \$25,965.40 derived from the sale of property received from Fried Bros. Realty Co. In computing their total New York income, petitioners claimed a subtraction modification of \$11,614.16. Such modification, which related to the use of a higher New York State basis for said property than that used for Federal purposes, was explained in a schedule annexed to the return, as follows:

"Adjustment of capital gain basis for property received from Fried Bros. Realty Corp. under liquidation 12/31/58 by Federal court under Sec. 333 (Internal Revenue Code). New York State valued said interest at fair market value."

New York State basis (fair market value)	\$62,000.00
Federal basis	<u>38,771.68</u>
Adjustment to increase taxpayer's basis	<u>\$23,228.32</u>
50% x \$23,228.32 (modification to reduce NYS gain)	<u><u>\$11,614.16</u></u>

The aforestated modification was not adjusted for New York State personal income tax purposes.

2. In conjunction with their personal income tax return, petitioners Leon Fried and Emma Fried, filed a New York State Minimum Income Tax Computation Schedule (with New York City Resident Minimum Income Tax) wherein they reduced their Federal item of tax preference for capital gains of \$25,965.40 by the aforestated basis modification of \$11,614.16 and a 20 percent capital gain modification of \$2,870.25 (computed on the reduced New York State gain) to arrive at total New York State items of tax preference of \$11,480.99. In computing New York City minimum income tax, petitioners further reduced their reported New York State item of tax preference to an amount used for City purposes of \$8,819.81, based on an additional basis modification claimed for New York City personal income tax purposes, which was explained in the aforestated schedule as follows:

"Adjustment - Additional adjustment (for New York City) to capital gain to adjust basis as of 7/1/66."

Adjustment New York City	\$29,881.28
Adjustment made for New York State	23,228.32
Additional adjustment	<u>\$ 6,652.96</u>
50% x \$6,652.96 (modification to reduce NYC gain)	<u>\$ 3,326.48</u>

Said modification of \$3,326.48 was attributable to the assignment of a greater basis for New York City purposes than that computed for New York State purposes.

3. On September 12, 1978, petitioners, Leon Fried and Emma Fried, filed a petition in response to a Notice of Adjusted Credit issued by the Income Tax Bureau which increased their New York City income tax by \$221.51. The petition indicates that said Notice disallowed, in effect, a modification claiming a

higher New York City basis for certain property sold during 1976 than that used for New York State.

4. On March 4, 1980, the Audit Division issued a Statement of Audit Changes to petitioners Leon Fried and Emma Fried wherein it stated "Your minimum income tax computation is incorrect. You incorrectly claimed a subtraction of \$11,614.16 in computing 'Total Items of Tax Preference'." Based on the computations contained therein, minimum income tax was computed based on the Federal item of tax preference, exclusive of basis modifications as claimed. Accordingly, a Notice of Deficiency was issued against said petitioners on March 27, 1980 asserting additional New York State and New York City minimum income tax of \$792.13, plus interest of \$198.48, for a total of \$990.61.

5. On June 27, 1980, petitioners filed a petition with respect to the aforestated deficiency.

6. Petitioner Israel Fried filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) for 1976 in conjunction with a New York State Minimum Income Tax Computation Schedule (with New York City Resident Minimum Income Tax). A modification increasing said petitioner's New York State basis on property sold, which was received from Fried Bros. Realty Co., was made in a manner, and on a basis identical to that of petitioners Leon Fried and Emma Fried. Such modification of \$5,807.08 was not adjusted for New York State personal income tax purposes. In computing New York State minimum income tax, petitioner reduced his Federal item of tax preference by certain modifications inclusive of said basis modification of \$5,807.08. In computing New York City minimum income tax, he further reduced his Federal item of tax preference by certain long-term capital gains attributable to "installment sales made prior to July 1, 1966", which he contended are not taxable for New

York City purposes. Such gains were also subtracted (in addition to the basis modification of \$5,807.08) in computing New York City personal income tax.

7. On September 13, 1977, the Income Tax Bureau issued a Notice of Adjusted Credit to petitioner Israel Fried. Such Notice reduced petitioner's claimed overpayment of \$2,949.34 to \$2,487.33. Pursuant to the computations incorporated therein, New York City personal income tax was computed from petitioner's reported "New York taxable income", thereby disallowing, in effect, both his claimed modification for a greater New York City basis and his claimed subtraction for the installment gains alleged to be nontaxable. New York City minimum income tax was computed on petitioner's reported minimum taxable income pursuant to his New York State Minimum Income Tax Computation Schedule, thereby disallowing, in effect, said subtraction for certain capital gains attributable to installment sales which he alleged are nontaxable for New York City purposes.

8. On September 11, 1978, petitioner, Israel Fried, filed a petition for recovery of the disallowed credit of \$462.01, as computed pursuant to said Notice of Adjusted Credit.

9. On March 4, 1980, the Audit Division issued a Statement of Audit Changes to petitioner Israel Fried wherein it stated "Your minimum income tax computation is incorrect. You incorrectly claimed a subtraction of \$5,897.28 in computing 'Total Items of Tax Preference'." Based on the computations contained therein, minimum income tax was computed on the Federal item of tax preference (capital gain) of \$18,421.23, exclusive of the New York State and New York City basis modifications as claimed. Accordingly, a Notice of Deficiency was issued against petitioner on March 27, 1980 asserting additional New York

State and New York City minimum income tax of \$400.92, plus interest of \$100.45, for a total of \$501.37.

10. On June 30, 1980, petitioner Israel Fried filed a petition with respect to the aforestated deficiency.

11. Petitioners contended that since section 612(c)(4) of the Tax Law provides for a modification with respect to personal income tax, resulting from the higher New York State basis used for the Fried Bros. Realty Co. property, such modification should properly be allowable for minimum income tax purposes as well. Furthermore, they alleged that, pursuant to the Tax Law, they were not required to report items of tax preference for New York State and New York City purposes in amounts equal to those items of tax preference reported for Federal purposes.

12. With respect to the installment gains reported as nontaxable for New York City purposes, petitioner Israel Fried contended that since the installment sales occurred prior to the enactment of a New York City income tax (1966), the gains derived during the year at issue herein, which are attributable to such sales, are exempt from the imposition of New York City income tax. He claimed that to tax such gains is unconstitutional.

13. With respect to the modification claimed for a higher New York City basis than New York State basis for the 1976 installment gain derived from the sale of the Fried Bros. Realty Co. property, petitioners contended that for City purposes a higher basis determined as of July 1, 1966 is applicable.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law 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 references to particular sections of Article 22 shall be deemed references (though uncited) to corresponding sections of Article 30.

B. That the New York items of tax preference are identical in amount to the Federal items of tax preference, with the exception of certain applicable modifications, none of which relate to use of a higher basis for computing capital gains for New York purposes than for Federal purposes. Accordingly, the adjustments disallowing such basis modifications for New York State and New York City minimum income tax purposes are hereby sustained within the meaning and intent of section 622 of the Tax Law.

C. That section 1303 of Article 30 of the Tax Law provides that, "The city taxable income of a city resident individual shall mean and be the same as his New York (State) taxable income...".

Accordingly, petitioners are not properly entitled to claim a higher basis of property sold for New York City purposes than for New York State purposes.

D. That the installment gains derived by petitioner Israel Fried from transactions entered into prior to the enactment of the New York City income tax, are taxable for New York City purposes, for the year at issue herein, pursuant to section 1303 of the Tax Law.

E. That the constitutionality of the laws of the State and City of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional.

F. That the petitions of Leon Fried and Emma Fried dated September 12, 1978 and June 27, 1980 are denied and the Notice of Deficiency dated March 27,

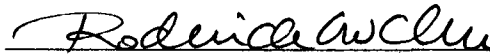
1980 is hereby sustained, together with such additional interest as may be lawfully owing.

G. That the petitions of Israel Fried dated September 11, 1978 and June 30, 1980 are denied and the Notice of Deficiency dated March 27, 1980 is hereby sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

MAY 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER