

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Robert G. Goelet & Alexandra C. Goelet :  
for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income Tax under Article :  
22 of the Tax Law for the Years 1976 and New York :  
City Personal Income Tax under Article 30 of the :  
Tax Law for the Year 1976 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. :

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Robert G. Goelet & Alexandra C. Goelet, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert G. Goelet & Alexandra C. Goelet  
c/o Goelet Estate Co.  
425 Park Ave.  
New York, NY 10022

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  
6th day of May, 1983.

David Parchuck

James A. Highland

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Robert G. Goelet & Alexandra C. Goelet :  
for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income Tax under Article :  
22 of the Tax Law for the Years 1976 and New York :  
City Personal Income Tax under Article 30 of the :  
Tax Law for the Year 1976 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. :  
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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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Katherine M. Bristor the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Katherine M. Bristor  
Shearman & Sterling  
53 Wall St.  
New York, NY 10005

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  
6th day of May, 1983.

David Parchuck

Constance A. Shearman

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT G. GOELET AND ALEXANDRA C. GOELET	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law for the Years	:	
1976 and 1977 and New York City Personal Income	:	
Tax under Article 30 of the Tax Law for the Year	:	
1976 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.	:	

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Petitioners, Robert G. Goelet and Alexandra C. Goelet, c/o Goelet Estate Co., 425 Park Avenue., New York, New York 10022, filed petitions for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1976 and 1977 and New York City personal income tax under Article 30 of the Tax Law for the year 1976 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. 25566, 25744 and 29322).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1982 at 1:30 P.M. Petitioner appeared by Shearman & Sterling (Katherine M. Bristor, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioners properly excluded their New York State and New York City personal income taxes from items of tax preference for purposes of determining their New York State and New York City minimum income tax for the years 1976 and 1977.

FINDINGS OF FACT

1. Petitioners, Robert G. Goelet and Alexandra C. Goelet, filed separately on a combined New York State Income Tax Resident Return for the year 1976. Petitioners submitted as an attachment to this return a New York State Minimum Income Tax Computation Schedule. Petitioners did not include "Federal excess itemized deductions" of \$57,151.00 in determining their total New York items of tax preference because they subtracted New York State and local income taxes and a modification for allocable expenses from federal excess itemized deductions thereby leaving no reportable balance.

2. Petitioners filed separately on a combined form New York State Income Tax Resident Return for 1977. Petitioners submitted as an attachment to this return a New York State Minimum Income Tax Computation Schedule. Petitioners did not include Federal adjusted itemized deductions of \$263,046.00 in their computation to determine their total New York items of tax preference because they subtracted New York State and local income taxes and a modification for allocable expenses from federal adjusted itemized deductions thereby leaving no reportable balance. Petitioners' computations resulted in a reported refund due of \$86,270.39.

3. On December 15, 1978, the Audit Division issued a Notice of Deficiency to Robert G. Goelet asserting additional personal income tax due of \$2,378.28 plus penalty and interest of \$9,161.07 for a total amount due of \$11,539.35 for the year 1976. The penalty asserted against Robert G. Goelet for the year 1976 was pursuant to Tax Law section 685(c) for underestimating his personal income tax due.

4. On December 15, 1978, the Audit Division also issued a Notice of Deficiency to Alexandra C. Goelet asserting that the amount of \$32.34 was due as penalty and interest for the year 1976.

5. The Statement of Audit Changes, which was issued to petitioners on May 2, 1978 stated that the New York Tax Law does not provide for the modification of Federal excess itemized deductions and that the amount reported on the Federal income tax return had to be fully reported on the New York income tax return. The Statement of Audit Changes also stated that the Federal itemized deductions that were considered excess deductions under the Internal Revenue Code had to be included in the New York items of tax preference because New York utilized the Federal definition of tax preference items. Accordingly, the Audit Division added the amount of the omitted "Federal excess itemized deductions" to the reported items of tax preference to determine the New York items of tax preference.

6. On July 30, 1979, the Audit Division issued to petitioners' legal counsel a notice of partial disallowance of petitioner's claim for a refund for the year 1977. The notice stated that, of the refund claimed of \$86,270.39, \$57,309.54 would be allowed and \$28,872.05 would be disallowed.<sup>1</sup> The Statement of Refund Adjustment, which was issued prior to the foregoing notice, determined the amount of petitioners' refund by adding petitioners' "adjusted itemized deductions" of \$263,046.00 to petitioners' reported items of tax preference of \$210,901.00 to determine the amount of petitioners' purported correct items of tax preference of \$473,947.00. On the basis of the adjusted items of tax preference, the Audit Division recomputed petitioners' alleged New York State and New York City minimum tax liabilities. The explanation for Audit Division's computations in the Statement of Refund Adjustment was essentially the same as that provided in the Statement of Audit Changes dated May 2, 1978.

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<sup>1</sup> The Statement of Refund Adjustment establishes that the Audit Division intended to allow \$57,398.34.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law for the year 1976 and the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 by its own terms relates to 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 the corresponding sections of Article 30 of the Tax Law for the year 1976 or Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977.

B. That subdivision (a) of section 622 of the Tax Law defines the New York minimum taxable income of a resident individual as "the sum of the items of tax preference", reduced by certain amounts. 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 four modifications. [Tax Law §622(b)]

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

"Section 57. Items of Tax Preference.

(a) In General. -- For purposes of this part, the items of tax preference are --

(1) Excess Itemized Deductions. -- An amount equal to the excess itemized deductions for the taxable year [as determined under subsection (b)].

\* \* \*

(b) Excess Itemized Deductions. --

(1) In General. -- For purposes of paragraph (1) of subsection (a) the amount of the excess 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 standard deduction provided by section 141,
- (C) the deduction for personal exemptions provided by section 151,
- (D) the deduction for medical, dental, etc. expenses provided in section 213, and,
- (E) 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."<sup>2</sup>

D. That petitioners properly included New York State and local income taxes in determining their 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)].

E. 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 were promulgated by the Secretary pursuant to section 58(h) of the Internal Revenue Code during the years in issue.

F. 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 petitioners' tax.

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<sup>2</sup> For the year 1977, the term excess itemized deductions was changed to adjusted itemized deductions and was modified in definition to include the sum of the deductions (for the year) other than items A, C, D and E of Conclusion of Law "C" and the deduction allowable under section 691(c)....

G. That during the periods at issue the New York State Tax Law did not contain a provision which permitted the deduction of any portion of New York State and local taxes from Federal items of tax preference to determine New York items of tax preference. In recognition of this omission, the Legislature enacted section 622(b)(5) of the Tax Law (Governor's Bill Jacket, L 1980, C. 669). This section of the Tax Law, which was added by chapter 669 of the laws of 1980, 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) of the Tax Law is not retroactive to the periods at issue (Matter of Dwight W. Winkelman and Marguerite P. Winkelman, State Tax Commission, March 5, 1982). Accordingly, petitioners improperly calculated their New York State and City minimum income tax (Matter of Dwight W. Winkelman and Marguerite P. Winkelman, supra; Matter of Howard Ross and Nanette Ross, State Tax Commission, February 5, 1982).

H. That the petitions of Robert G. Goelet and Alexandra C. Goelet are denied.

DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION

Rodwin G. Chen  
PRESIDENT

Frank R. Kony  
COMMISSIONER

Mark J. [Signature]  
COMMISSIONER