

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Henry G. Jarecki  
and Gloria F. Jarecki

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 Years  
1976 & 1977.

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 Henry G. Jarecki and Gloria F. Jarecki, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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.

Sworn to before me this  
6th day of May, 1983.

David Parchuck

*James R. Highland*  
 AUTHORIZED TO ADMINISTER  
 OATHS PURSUANT TO TAX LAW  
 SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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Henry G. Jarecki	:	
and Gloria F. Jarecki	:	AFFIDAVIT OF MAILING
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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 Years	:	
1976 & 1977.	:	

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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 Stanley N. Bergman the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley N. Bergman  
Bergman, Horowitz, Reynolds & DeSarbo  
900 Chapel St.  
New Haven, CT 06510

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

Carmie A. Heylund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

May 6, 1983

Henry G. Jarecki  
and Gloria F. Jarecki  
Timber Trail  
Harrison, NY 10580

Dear Mr. & Mrs. Jarecki:

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 Laws 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  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Stanley N. Bergman  
Bergman, Horowitz, Reynolds & DeSarbo  
900 Chapel St.  
New Haven, CT 06510  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
HENRY G. JARECKI and GLORIA F. JARECKI  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1976 and 1977.

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DECISION

Petitioners, Henry G. Jarecki and Gloria F. Jarecki, Timber Trail, Harrison, New York 10580, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1976 and 1977 (File No. 29423).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 20, 1982 at 2:45 P.M. Petitioners appeared by Bergman, Horowitz, Reynolds & DeSarbo, P.C. (Stanley N. Bergman, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Federal item of tax preference for excess itemized deductions should be reduced and/or modified by any portion of the New York State and local taxes included therein in arriving at New York items of tax preference subject to the New York minimum income tax.

FINDINGS OF FACT

1. Petitioners, Henry G. Jarecki and Gloria F. Jarecki, husband and wife, timely filed joint New York State income tax resident returns (Form IT-201/208) for the years 1976 and 1977. Petitioners also filed a second joint New York

State Income Tax Resident Return for the year 1977, amending their original return filed for that year.<sup>1</sup>

2. On October 4, 1979, the Audit Division issued to petitioners a Notice of Deficiency asserting additional tax due for the years 1976 and 1977 in the aggregate amount of \$27,479.12, plus penalty for the year 1977 and interest for both years.

3. A Statement of Audit Changes dated June 27, 1979, explained the above-asserted deficiency was based on a recomputation of petitioners' 1976 and 1977 New York tax liability to reflect inclusion of State and local taxes as among petitioners' itemized deductions for purposes of computing excess itemized deductions (1976) and adjusted itemized deductions (1977) considered items of tax preference subject to the New York minimum income tax.

4. For purposes of computing their New York minimum income tax on items of tax preference, New York State and local taxes paid were not included by petitioners among their itemized deductions. Hence, these amounts were not included in calculating the amount of petitioners' excess and adjusted itemized deductions subject to the minimum income tax.

5. Petitioners assert that the Audit Division's method of computation is inequitable in that for purposes of determining the amount of excess and adjusted itemized deductions which constitute items of tax preference subject to New York minimum income tax, there is no allowable adjustment reducing federal itemized deductions by the amount of State and local taxes paid in New York. Petitioners argue that using the federal definition of itemized deductions,

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<sup>1</sup> Petitioners' amended return made minor changes with respect to the amount of itemized deductions claimed and amount of minimum tax due, and had a net result of reducing, by \$63.75, the amount of tax shown as due per petitioners' return as originally filed.

without modification, results in a New York minimum income tax being imposed on certain itemized deductions which are not allowable as itemized deductions for New York purposes, and from which no New York tax benefit is derived. Finally, petitioners state section 58(h) of the Internal Revenue Code of 1954 (as amended) mandates a result contrary to that asserted by the Audit Division.<sup>2</sup>

CONCLUSIONS OF LAW

A. 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 in the laws of the United States, of a resident individual,...for the taxable year,..."

B. 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) 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

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<sup>2</sup> Section 58(h) of the Internal Revenue Code provides:

"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."

To date, no regulations have been promulgated under section 58(h).

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>3</sup>

C. That during the years at issue herein, there was no provision in the Tax Law which allowed any portion of New York State and local 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 1976 and 1977 (Matter of Dwight W. Winkleman and Marguerite P. Winkleman, State Tax Commission, March 5, 1982). Furthermore, no adjustment for Federal income tax purposes would be allowable under Internal Revenue Code section 58(h) with respect to the items of deduction at issue herein, inasmuch as the (Federal) tax treatment of those items resulted in a reduction of petitioners' tax.

D. That for the period at issue herein, petitioners improperly calculated their New York items of tax preference subject to New York minimum income tax. (Matter of Howard Ross and Nanette Ross, State Tax Comm., February 5, 1982;

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<sup>3</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 "B" and the deduction allowable under section 691(c)....


Matter of Dwight W. Winkelman and Marguerite P. Winkelman, State Tax Comm.,  
March 5, 1982).

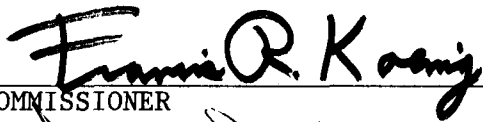
E. That the petition of Henry G. Jarecki and Gloria F. Jarecki is hereby denied and the Notice of Deficiency issued on October 4, 1979, together with such interest and penalty as may be lawfully owing, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER