

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louis Marx, Jr. :
and Helen Marx :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Years 1976 & 1977.

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 28th day of January, 1983, he served the within notice of Decision by certified mail upon Philip Zimet the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip Zimet
Zimet, Haines, Moss & Friedman
460 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 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
28th day of January, 1983.

David Parchuck

Cornelia G. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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Ann P. Haglund

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OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 28, 1983

Louis Marx, Jr.
and Helen Marx
767 Fifth Ave.
New York, NY 10022

Dear Mr. & Mrs. Marx:

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 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
Philip Zimet
Zimet, Haines, Moss & Friedman
460 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE TAX COMMISSION

DECISION

II. Whether petitioners properly used their New York itemized deductions, rather than their federal itemized deductions, for purposes of computing the extent to which itemized deductions were to be considered an item of tax preference.

FINDINGS OF FACT

1. On September 8, 1977, petitioners, Louis Marx, Jr. and Helen Marx, timely filed their joint New York State Income Tax Resident Return (IT-201/208) for the year 1976. Petitioners had previously sought and received permission extending the time within which to file their return to October 15, 1977. The amount of New York State tax they paid for this year was \$610,273.03 and the amount of New York City tax paid was \$194,858.87, for a total of \$805,131.90.

Petitioners timely filed their joint New York State return for the calendar year 1977 on October 13, 1978. They had similarly received permission extending the time within which to file to October 15, 1978. The amount of New York State tax they paid for this year was \$78,872.00 and the amount of New York City tax paid was \$25,379.97, for a total of \$104,251.97.

2. In computing their New York State and New York City minimum income taxes (IT-220) for each of the calendar years 1976 and 1977, petitioners eliminated from the items of tax preference the amount claimed on their federal returns for New York State and New York City income taxes which they paid in each of these years.

Petitioners made an additional adjustment in the computation of their items of tax preference. For 1976, petitioners' New York itemized deductions were less than 60 percent of their New York adjusted gross income; therefore, they subtracted the amount of federal excess itemized deductions in the computation of the tax preference items for that year since they received no New York tax benefit from these deductions. For 1977, petitioners reduced their federal adjusted itemized deductions of \$758,393.46 by the excess of federal adjusted itemized deductions over adjusted itemized deductions for New York State tax purposes of \$345,788.36. The difference of \$412,605.10 was entered as a

subtraction from total federal items of tax preference on the New York Minimum Income Tax Computation Schedule.

3. On April 11, 1979, the Audit Division issued to petitioners a Notice of Deficiency, asserting New York State and New York City income taxes due for 1976 and 1977 (plus interest thereon), scheduled as follows:

	<u>NEW YORK STATE</u>	<u>NEW YORK CITY</u>	<u>TOTAL</u>
1976	\$157,358.55	\$57,082.50	\$214,441.05
1977	54,735.70	18,655.99	73,391.69

In support of the asserted deficiencies, the Statement of Audit Changes, issued to petitioners on March 23, 1979, explained, "The New York Tax Law does not currently allow a modification to be made for State and Local Income Taxes in the computation of New York Items of Tax Preference."

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law for 1976 and by Chapter 46, Title T of the Administrative Code of the City of New York for 1977 and thereafter, 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, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references, though uncited, to the corresponding sections of Article 30 or Chapter 46, Title T.

B. 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 by the laws of the United States, of a resident individual,...for the taxable year..."

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

"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."

D. That the issues raised by petitioners were considered and decided by this Commission in the Matter of Howard Ross and Nanette Ross (February 5, 1982) and the Matter of Dwight W. Winkelman and Marguerite P. Winkelman (March 5, 1982). Prior to the addition of paragraph (5) to section 622, subdivision (b) in 1980 (L. 1980, Ch. 669, effective June 30, 1980 and applicable to taxable years beginning after December 31, 1979), there was no provision in the Tax Law which allowed a portion of New York State and New York City personal income taxes to be deducted from federal items of tax preference in arriving at New York items of tax preference. Nor is there any provision permitting use of the New York itemized deductions rather than federal itemized deductions for

purposes of computing excess itemized deductions which are items of tax preference. Accordingly, for the period at issue herein, petitioners improperly calculated their New York items of tax preference subject to New York minimum tax.

E. That the petition of Louis Marx, Jr. and Helen Marx is hereby denied and the Notice of Deficiency issued on April 11, 1979 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 28 1983

STATE TAX COMMISSION

ACTING

Robert W. Bland
PRESIDENT

Francis R. Koehn
COMMISSIONER

Mark J. M.
COMMISSIONER