

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Pamela E. Prince :
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and 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 }

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 Pamela E. Prince, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Pamela E. Prince
c/o Mary Alice Hiss
P.O. Box 48102
Los Angeles, CA 900480102

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

Burns A. Haylund
pursuant to Tax Law section 174

Authorized to administer oaths

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

December 20, 1983

Pamela E. Prince
c/o Mary Alice Hiss
P.O. Box 48102
Los Angeles, CA 900480102

Dear Ms. Prince:

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 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PAMELA E. PRINCE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law and Chapter 46, Title T of	:	
the Administrative Code of the City of New	:	
York for the Year 1977.	:	

Petitioner, Pamela E. Prince, 220 East 54th Street, Apt. 2C, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977. (File No. 36679).

On March 28, 1983, petitioner advised the State Tax Commission, in writing, that she desired to waive a small claims hearing and to issue a decision based on the entire record contained in the file and briefs to be submitted by June 30, 1983.

ISSUE

Whether discounted interest on notes receivable is taxable to a New York State resident.

FINDINGS OF FACT

1. Petitioner, Pamela E. Prince ("petitioner"), filed a New York State income tax resident return for 1977 with attached Federal Schedules C, D, E and Form 4831 (Rental Income). Said return showed a refund due of \$189.78 which she received. On August 11, 1978, she filed an amended New York State income tax return showing a subtraction from total income of \$5,449.76, which amount represented discount interest received on notes (\$5,047.99) and interest

received on U.S. Treasury bonds (\$401.77). Petitioner also filed an amended Federal income tax return for 1977.

2. Petitioner stated in a letter with her amended return that she was amending her return because of an understatement of rental income and because Federal Schedule B "shows a total of \$5,047.99 Discount Interest which should not be reported on the New York State & City forms".

3. On December 27, 1978, the Audit Division issued a Statement of Audit Changes showing a tax due of \$15.01 with the following explanation:

"A resident of New York State is taxable on all income that is taxable by the Federal Government, except that which a modification is allowable under Section 612 of the New York State Tax Law. Since there is no provisions for the modification of the discounted interest, the refund requested is disallowed.

The correction of the rental income leads to an additional tax due."

4. In 1973, petitioner inherited some notes receivable (secured by Deeds of Trust on Real Property) from her father, who was a resident of California.

5. Petitioner, in response to the disallowance of her refund, alleged that (1) the notes receivable were California property and the discount interest should not be reported on her New York State income tax return (2) the notes discounted had a higher adjusted basis for New York tax purposes than for federal tax purposes because the Internal Revenue Service, when valuating assets on the Federal Estate Tax Return, allowed the notes to be valued at an amount lower than their face value at the date of death in order to defer a portion of the estate tax (3) the notes were not discounted by the California tax department and, therefore, an inheritance tax had to be paid to said state on the face value of the notes (4) the discount interest was not required to be reported on the California income tax return despite the notes having a higher

adjusted basis than that for federal tax purposes (5) having to report the interest from these notes to New York is double taxation.

6. On December 6, 1979, the Audit Division sent petitioner a letter advising that her refund claim was disallowed on the grounds that "The starting point for New York tax is Federal adjusted gross income. Since the income reported has no basis for a modification under the old Article 16 of the New York State tax law no adjustment is allowed for New York tax purposes." On March 31, 1980, petitioner received a formal Notice of Disallowance of her claim for refund.

7. Petitioner asserted that under section 612(c)(4) of the Tax Law, the deduction of discount interest from New York income should be allowed since the notes that were discounted had a higher adjusted basis for New York tax purposes than for federal income tax purposes.

CONCLUSIONS OF LAW

A. That sections 612(a) of Article 22 of the Tax Law and T46-112.0(a) of the Administrative Code of the City of New York state that "the New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section".

B. That sections 612(c)(4) of Article 22 of the Tax Law and T46-112.0(c)(4) of the Administrative Code of the City of New York provide, in part, that "There shall be subtracted from Federal adjusted gross income...[t]he portion of any gain, from the sale or other disposition of property having a higher adjusted basis for New York income tax purposes than for federal income tax purposes on the last day of the last taxable year for which article sixteen imposes tax, ..." (emphasis added).


C. That New York Tax Law does not provide any modification for subtracting discounted interest received on notes receivable in a year during which Article 22 was in effect. The section to which petitioner refers (612(c)(4)) in Finding of Fact "7" supra, is relative to property acquired prior to January 1, 1960 (see 20 NYCRR 116.3). Therefore, the discounted interest received on notes receivable constituted New York income and is subject to New York tax.

D. That the petition of Pamela E. Prince is denied and the Notice of Disallowance dated March 31, 1980 is sustained.

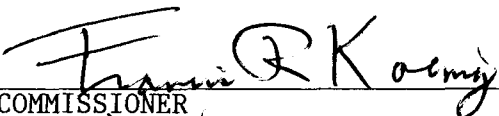
DATED: Albany, New York

STATE TAX COMMISSION


DEC 20 1983



PRESIDENT



COMMISSIONER



COMMISSIONER