

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Harold & Sylvia Simon	:	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 Year	:	
1971.	:	

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Harold & Sylvia Simon, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold & Sylvia Simon
36 Kenwood Dr.
New Rochelle, NY 10804

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
4th day of February, 1983.

David Parchuck

Cherie O. Haywood

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 4, 1983

Harold & Sylvia Simon
36 Kenwood Dr.
New Rochelle, NY 10804

Dear Mr. & Mrs. Simon:

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

Taxing Bureau's Representative

STATE TAX COMMISSION

2. On November 25, 1975 petitioners filed a Claim for Credit or Refund of Personal Income Tax, Form IT-113X, for the year 1971 whereon a refund was claimed of \$1,872.64 based on net operating loss deductions carried back to

said year from 1974, and the unused portion of the 1973 net operating loss initially carried back to 1970.

3. On March 10, 1976 the Audit Division issued a notice to petitioners advising them that their claim for refund has been partially allowed to the extent of \$997.52. The disallowance per said notice of \$875.12 was explained in a Voucher for Income Tax Refund attached thereto. Pursuant to said voucher "Adjustment must be made to the 1971 overpayment based on a Federal Audit Report of October 20, 1975 which allowed an adjustment of only \$7,125.17 which consisted of a net operating loss of \$15,560.17 and an increase in income of \$8,435.00." On September 27, 1976 the Audit Division issued a formal Notice of Disallowance to petitioners.

4. The net operating loss deduction of \$15,560.17 allowed by the Internal Revenue Service for 1971 was comprised of the unused portion of a 1973 loss initially carried back to 1970, plus a 1974 loss carried back to 1971.

5. Petitioner claimed a net operating loss deduction for New York State purposes of \$21,983.72 for the year 1971. He argued that he is entitled to such greater net operating loss deduction since he and his wife filed separate New York State Returns for 1970, and the 1973 loss was applied solely to his separate income, thereby leaving a greater unused portion of such loss to carry back to 1971 for New York State purposes than that which was carried back to 1971 for federal purposes.

CONCLUSIONS OF LAW

A. That the Tax Law makes no provision which would allow a net operating loss deduction, or carryback or carryover deduction, which exceeded the allowance for federal income tax purposes, see Matter of Roslyn T. Lea, State Tax Commission decision, December 11, 1981 and cases cited therein.

B. That the petition of Harold Simon and Sylvia Simon is denied and the formal Notice of Disallowance of petitioners' claim for refund dated September 27, 1976 is hereby sustained.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

Robert A. Barland
VICE PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER