

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Estate of Richard U. Wilson	:	
and Elaine P. Wilson	:	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	:	
1972.	:	

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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 15th day of April, 1983, he served the within notice of Decision by certified mail upon Estate of Richard U. Wilson and Elaine P. Wilson, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

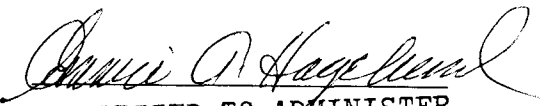
Estate of Richard U. Wilson  
and Elaine P. Wilson  
c/o Alan Wilson, Executor  
Suite 3410, 60 State St.  
Boston, MA 02109

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  
15th day of April, 1983.

David Parchuck

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Estate of Richard U. Wilson	:	
and Elaine P. Wilson	:	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	:	
1972.	:	

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 15th day of April, 1983, he served the within notice of Decision by certified mail upon Gerald E. Van Strydonck the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald E. Van Strydonck  
Price Waterhouse & Co.  
1900 Lincoln First Tower  
Rochester, NY 14604

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  
15th day of April, 1983.

David Parchuck

Ann E. O'Hagan

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

April 15, 1983

Estate of Richard U. Wilson  
and Elaine P. Wilson  
c/o Alan Wilson, Executor  
Suite 3410, 60 State St.  
Boston, MA 02109

Dear Mr. Wilson:

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  
Gerald E. Van Strydonck  
Price Waterhouse & Co.  
1900 Lincoln First Tower  
Rochester, NY 14604  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ESTATE OF RICHARD U. WILSON : DECISION  
and ELAINE P. WILSON :  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1972. :

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Petitioner, the Estate of Richard U. Wilson and Elaine P. Wilson, c/o Alan Wilson, Executor, Suite 3410, 60 State Street, Boston, Massachusetts 02109, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 26047).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York on July 23, 1981, at 1:15 P.M. The petitioners appeared by Gerald E. Van Strydonck, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq., (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the amount of net operating loss in a carryback year is limited to positive Federal taxable income computed before application of the net operating loss provisions or Federal modified taxable income computed pursuant to section 172(b)(2) of the Internal Revenue Code.

FINDINGS OF FACT

1. On September 7, 1977 petitioners filed a claim for refund (IT-113X) of personal income tax for the year 1972 in the amount of \$58,436.00 based on a carryback of net operating loss from the year 1974.

2. On June 20, 1978, petitioners were mailed a "Waiver of Statutory Notification of Claim Disallowance" showing that the Audit Division allowed

\$39,673.12 of petitioners' claim for refund and denied \$18,762.88. Petitioners did not sign said waiver and on July 31, 1978, the Audit Division mailed a formal notice of disallowance.

3. Petitioners contended that Internal Revenue Code (IRC) section 172(b)(2)(A) requires that the taxable income for the year to which the carryback is to be applied, be modified by the capital gain deduction (IRC section 172(d)(2)), personal exemptions (IRC section 172(d)(3)) and certain modifications to itemized deductions (Treas. Reg. Sec. 1.172-3(a)(3)(i)) in arriving at the taxable income limitation to which the net operating loss carryback is compared. Petitioners' computation of taxable income for purposes of the 1972 net operating loss deduction limitation pursuant to Section 172(b)(2) of the Internal Revenue Code is as follows:

1972 Taxable Income	\$ 67,434.00
Section 172(b)(2)(A) Modifications:	
Capital gain deduction (added back)	446,496.00
Exemptions (added back)	2,250.00
Modification to Itemized Deductions	<u>-0-</u>
Taxable income for purpose of net operating loss limitation, which amount cannot be less than zero	<u>\$516,180.00</u>

4. Petitioners also contended that since the net operating loss of \$454,039.00 is less than the limitation, the entire loss is deductible on the 1972 federal tax return in arriving at federal adjusted gross income and that since New York State has no law governing the calculation of a net operating loss, the federal rules must be followed. The Internal Revenue Service has accepted petitioners' federal adjusted gross income as correct.

5. The Audit Division computed petitioners' refund as follows:

1972 Total New York income, adjusted - husband	\$477,928.00
Maximum net operating loss deduction	<u>(67,434.00)</u>
Total New York income adjusted	\$410,494.00
Federal itemized deductions, adjusted	\$361,779.00
Life insurance premiums	100.00
Less: State and local taxes	58,000.00

Less: Section 615(c)(4) modification	23,248.00	
New York itemized deductions	\$280,631.00	
Less: Amount allocated to wife	(12,533.00)	
New York itemized deductions - husband		\$268,098.00
Balance		\$142,396.00
Exemptions		1,300.00
New York taxable income		\$141,096.00
Tax per tax rate schedule		\$ 19,474.40
Minimum income tax		1,664.34
Total tax		\$ 21,138.74
Tax surcharge		528.47
Total tax due		\$ 21,667.21
Tax as previously adjusted		61,340.33
Overpayment - 1972		\$ 39,673.12
REFUND OF PERSONAL INCOME TAX		\$ 39,673.12

#### CONCLUSIONS OF LAW


A. That section 172 of the Internal Revenue Code provides that the net operating loss is a deduction from gross income to arrive at adjusted gross income. However, for the purposes of determining carrybacks and carryovers the Code requires that the deduction shall not be used to reduce taxable income for the deduction year to an amount less than zero. The portion of the net operating loss allowed as a deduction in the carryback year was a deduction used in recomputing petitioners' Federal adjusted gross income for said year. Therefore, the amount allowed as a carryback for New York State income tax purposes is the lesser of the amount of the carryback for Federal income tax purposes or the amount of positive Federal taxable income. (See Matter of James H. Sheils et al., v. State Tax Commission, 52 N.Y.2d 954, rev'g 72 A.D.2d 896).

B. That petitioners' New York net operating loss deduction has been properly limited to positive Federal taxable income. Therefore the petition and claim for the additional refund of \$18,762.88 is denied.



DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1983

  
PRESIDENT

  
COMMISSIONER

   
COMMISSIONER