

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Betty Hatfield

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the :  
Year 1975.

\_\_\_\_\_  
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 26th day of July, 1984, he served the within notice of Decision by certified mail upon Betty Hatfield, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Betty Hatfield  
500 16 St., Apt. 302  
Watervliet, NY 12189

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  
26th day of July, 1984.

David Parchuck

Annunzio J.

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Betty Hatfield : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
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Tax under Article 22 of the Tax Law for the :  
Year 1975. :

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State of New York }  
County of Albany } ss.:

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 26th day of July, 1984, he served the within notice of Decision by certified mail upon John H. Nolan, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John H. Nolan  
2172 Thirteenth St.  
Troy, NY 12180

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 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  
26th day of July, 1984.

David Parchuck

James Arthur  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

July 26, 1984

Betty Hatfield  
500 16 St., Apt. 302  
Watervliet, NY 12189

Dear Ms. Hatfield:

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, 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: Petitioner's Representative  
John H. Nolan  
2172 Thirteenth St.  
Troy, NY 12180  
AND  
Carly P. Byrne  
RD #2 Travers Rd.  
Gansevoort, NY 12831

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
BETTY HATFIELD	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

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Petitioner, Betty Hatfield, 500 16th Street, Apt. 302, Watervliet, New York 12189, 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 1975 (File No. 39348).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on December 5, 1983 at 10:45 A.M., with all briefs to be submitted by February 28, 1984. Petitioner appeared by John H. Nolan, P.A. and Carley P. Byrne, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

#### ISSUES

I. Whether certain payments received by petitioner in connection with property appropriated by the State in or about 1969 must be included in income in 1975 when actually received by petitioner.

II. Whether the deficiency asserted against petitioner was timely issued in accordance with the terms of section 683(d) of the Tax Law.

#### FINDINGS OF FACT

1. Petitioner, Betty Hatfield, and her husband, William Hatfield, who died on June 9, 1972, filed a New York State Income Tax Resident Return (Form

IT-201) for 1970, on which no tax liability was reflected. Federal Schedule D (Sales or Exchanges of Property) attached to this return reflected the following information at Part VI (Gain from Disposition of Depreciable Real Property Held More Than 6 Months) with regard to several parcels of property, with buildings and other improvements, located in Watervliet, New York ("the property"):

Cost Basis	\$125,432.73
Depreciation Allowed (or Allowable)	23,171.08
Adjusted Basis	<u>\$102,261.65</u>
Gross Sales Price	78,907.50
Loss	<u>(\$ 23,354.15)<sup>1</sup></u>

2. In or about 1969, the aforementioned property had been appropriated by the State of New York (Department of Transportation). It is this involuntary conversion via condemnation which gives rise to the instant controversy.

3. According to documents introduced in evidence by the parties, an original offer of \$116,000.00 was made by the State for the condemned property. An Agreement for Partial Payment, dated August 4, 1969 and approved by the State Comptroller's Office on September 9, 1969, reflected an agreement by Mr. and Mrs. Hatfield to accept \$87,675.00 (75 percent of the Commissioner of Transportation's original offer for the property) in part payment for the property. The balance was apparently to be held in escrow pending the outcome of a planned challenge to the sufficiency of the State's proposed condemnation award of \$116,000.00.

4. By a check and letter dated March 25, 1970, the Hatfield's received \$93,481.64 in partial payment for their property. No specific explanation was offered for the difference between the agreed partial payment amount (\$87,675.00) and the actual payment amount. Presumably, such difference is attributable to

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<sup>1</sup> Petitioner's 1970 return reflects a miscellaneous itemized deduction of \$23,404.15, presumably including the above-claimed loss.

interest paid on the partial payment amount. No explanation was offered as to why the 1970 return (Schedule D) reflects a gross sales price of \$78,907.50 for the property rather than \$87,675.00.

5. Petitioner and Mr. Hatfield retained legal counsel and, on September 11, 1970, commenced an action in the Court of Claims seeking an increase over the State's offer of \$116,000.00 for the property.

6. Prior to trial the parties settled the claim, with the final figure for the property being agreed upon as \$170,000.00. This agreement is documented by an Agreement of Adjustment, dated November 25, 1974, reflecting a balance due of \$82,325.00 (\$170,000.00 less previous partial payment of \$87,675.00).

7. On March 4, 1975, petitioner (individually and as the executrix of the estate of Mr. Hatfield) received payment from the State in the amount of \$105,197.57, representing the balance due on the property (\$82,325.00), plus interest (\$22,872.57).

8. On September 9, 1976, petitioner filed a New York State Income Tax Resident Return (Form IT-201) for the year 1975, on which New York adjusted gross income ("A.G.I.") of \$10,649.73 was reported. Petitioner's tax liability (including surcharge) was reflected as \$288.00 which, after allowance for estimated payments totalling \$220.00, resulted in a remittance by petitioner of \$68.00 in tax plus \$1.93 in interest. None of the additional payment of principal or interest received in 1975 with respect to the appropriated property was reported on petitioner's 1975 tax return.

9. On or about December 18, 1976, petitioner (individually and as the executrix of the estate of Mr. Hatfield) filed a New York State Combined Income Tax Return (Form IT-208) for 1970, amending the return previously filed for 1970 (see Finding of Fact "1") as follows:

<u>Item</u>	<u>Return as Originally Filed</u>	<u>Return as Amended</u>	<u>Change</u>
Gross Sales Price for Subject Property (Schedule D)	\$ 78,907.50	\$170,000.00	\$ 91,092.50
Cost (or other) Basis including expenses of sale	125,432.73	159,338.77	33,906.04
Allowed (or Allowable) Depreciation	23,171.08	30,144.78	6,973.70
Adjusted Basis	102,261.65	129,193.99	26,932.34*
Gain (Loss) on Sale	(23,354.15)	40,806.01	

Petitioner's amended 1970 return, including the above long-term capital gain of \$40,806.01, reflected a New York A.G.I. of \$30,416.79 and an ultimate tax liability of \$2,189.93 which, together with interest of \$1,062.53, was remitted by petitioner.

10. On August 10, 1979, the Audit Division issued to petitioner a Statement of Audit Changes whereon a recomputation of petitioner's 1975 tax liability was reflected. This recomputation was premised upon inclusion in petitioner's 1975 New York income of the \$82,325.00 (capital gain) payment received by petitioner in 1975 and of \$22,872.57 in interest associated therewith also received in 1975. This recomputation resulted in additional personal income tax and minimum income tax due in the aggregate amount of \$12,296.88, plus interest.

11. On May 13, 1982, the Audit Division issued to petitioner a Notice of Deficiency asserting additional tax due for 1975 in the amount of \$12,296.88, plus interest.

12. The Audit Division asserts that the entire payment received by petitioner in 1975 was properly includible in petitioner's 1975 income as the adjusted cost

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\* The \$26,932.34 increase in adjusted basis represents, in part, claimed expenses for legal and appraisal fees allegedly incurred in challenging the State's originally proposed payment for the property and, in part, the costs of certain alleged newly discovered improvements to the property (after reduction of such costs by allowable depreciation on the improvements).



basis of the property had been exceeded by the 1970 partial payment. The Audit Division further asserts that petitioner's omission of this amount from income in 1975 resulted in an omission from New York A.G.I. in excess of twenty-five percent of New York A.G.I. as stated in petitioner's 1975 return, thus allowing assessment within a six year rather than a three year period of limitations.

13. Petitioner maintains that the payment received in 1975, as well as the claimed increase in the property's basis, was properly reported for 1970 via the amended return filed for 1970, and that all tax due in connection with the condemnation award has been paid. Additionally, petitioner disputes the propriety of using a six year period of limitations.

14. At all times, petitioner has been a cash basis and not an accrual basis taxpayer.

15. Following the hearing, petitioner's representative submitted copies of workpapers listing the cost of buildings and improvements to the property, with amounts of depreciation claimed annually on the buildings and improvements. Such worksheets showed depreciation totalling \$30,144.78, as opposed to the \$23,171.08 originally claimed in 1970. This increase of \$6,973.70 allegedly resulted from additional allowable depreciation calculated by petitioner's accountant on newly discovered improvements. It was not specified where or how such increase was discovered or calculated, or whether the increase stems from a change in the method of depreciation used.

16. In addition to the foregoing, an increase to adjusted basis was also claimed based upon additional legal and appraisal fees incurred in connection with contesting the condemnation award. The above-noted workpapers reflect legal fees of \$18,264.45 and appraiser's fees of \$1,500.00. The aggregate

amount of such fees (\$19,764.45) was supported by correspondence included as part of petitioner's Exhibit "4" in evidence.

17. At the hearing, petitioner conceded and does not dispute the fact that interest received but not reported in 1975 (\$22,872.57) is properly includible in petitioner's 1975 income and is subject to tax as ordinary income.

#### CONCLUSIONS OF LAW

A. That although specific dates were not provided by petitioner as to when title to the various parcels passed to the State, it appears that title passed in or about late 1969. In 1970, petitioner and her late husband actually received \$87,650.00\*\* in partial payment for the property appropriated. In 1975, petitioner actually received \$82,375.00\*\* as the balance due in payment on the subject property. As to reporting these amounts, petitioner and Mr. Hatfield initially included \$78,907.50 as the amount received for the property in 1970. This amount was offset against a claimed adjusted basis of \$102,261.65, with the entire resultant net loss apparently deducted as a miscellaneous itemized deduction in 1970. Thereafter, in 1976, petitioner included the \$82,375.00 actually received in 1975, together with the \$87,650.00 actually received in 1970, on an amended 1970 return. Petitioner offset this combined amount (\$170,000.00) against a claimed adjusted basis of \$129,193.99, to arrive at a long-term capital gain of \$40,806.01, fifty percent of which was ultimately included as income subject to tax on the amended 1970 return. No part of the principal amount or interest actually received by petitioner in 1975 was included in income on petitioner's 1975 New York tax return.

B. That petitioner used the cash method of accounting and thus was required to include in income those amounts received in connection with the

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\*\* Excluding interest.

condemnation of the property when such amounts were actually or constructively received, in cash or property, by petitioner [I.R.C. §451(a)].

C. That as of the end of 1970, the transaction at issue was not "closed", in view of the Hatfield's rejection of the Department of Transportation's proposed award and their subsequent institution of proceedings in the Court of Claims. Accordingly, the amount received by petitioner and Mr. Hatfield in 1970 (\$87,675.00) should properly be viewed as reducing the then-claimed adjusted basis of the property to \$14,586.65 (\$102,261.65 less \$87,675.00).<sup>2</sup> Since the transaction was not then closed, a loss was not properly recognizable in 1970 [see Hamilton D. Hill, 30 T.C.M. 534 (1971)]. However, the remaining adjusted basis in the property (\$14,586.65) was available to be used as an offset against the amount received by petitioner in 1975 following settlement of the pending lawsuit.

D. That petitioner's amended 1970 return (filed in 1976) does reveal a change in the claimed adjusted basis in the subject property, arising from claimed additional discovered improvements (less additional allowable depreciation of \$6,973.70), and claimed legal fees and appraiser's fees of \$19,764.45 (refer to Findings of Fact "9" and "16"). As a general proposition, the remaining undepreciated cost basis of improvements to the property, as well as fees of the nature described, are properly allowable in reduction the gain ultimately realized on sale (here condemnation). However, while the evidence submitted does support the claimed additional legal and appraisal fees in the aggregate

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<sup>2</sup> No information was submitted by petitioner in explanation of the difference between the amount received in 1970 per the Agreement for Partial Payment (\$87,675.00) versus the amount reported by petitioner and Mr. Hatfield on the original 1970 return (\$78,907.50). The Agreement for Partial Payment clearly reflects a payment (excluding interest) of \$87,675.00. Given no support for any reduction thereto, such figure is used for purposes of computing the reduction to the property's adjusted basis as of 1970.

amount of \$19,764.45 (deductible as expenses of sale), the evidence does not specify or identify the existence of any additional improvements or support an increase to basis therefor (see Findings of Fact "15" and "16"). Accordingly, the amount received in 1975 (\$82,325.00) may be reduced by \$14,586.65 of remaining basis in the property and by \$19,764.45 in expenses, to arrive at \$47,973.90 as the amount of capital gain from the condemnation which is to be included in petitioner's income for 1975.

E. That section 683(d)(1) provides for the assessment of tax within six years from the date a return was filed where, inter alia:

"an individual omits from his New York adjusted gross income or the sum of his items of tax preference an amount properly includible therein which is in excess of twenty-five per cent of the amount of New York adjusted gross income or the sum of the items of tax preference stated in the return..."

Petitioner's 1975 return, as filed, reflected an adjusted gross income of \$10,649.73 with no items of tax preference reported. Inclusion of the long-term capital gain received by petitioner in 1975 gives rise to an item of tax preference (the portion of such gain not subject to New York personal income tax). Accordingly, the Notice of Deficiency issued to petitioner on May 31, 1982, which was issued within six years of the September 9, 1976 date upon which petitioner's 1975 return was filed, was timely issued pursuant to the terms of Tax Law section 683(d)(1).

F. That the petition of Betty Hatfield is granted to the extent indicated in Conclusion of Law "D", but is in all other respects denied and the Notice of

Deficiency dated May 31, 1982, as modified in accordance herewith, together with such interest as may be lawfully owing,<sup>3</sup> is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 26 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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<sup>3</sup> Amounts paid with the amended 1970 return and with the 1975 return are to be allowed in reduction of petitioner's ultimate tax liability as recomputed for 1975.