

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Laurance S. Rockefeller

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under
Article 22 of the Tax Law for the Years 1976 :
through 1978 and New York City Personal Income Tax
under Article 30 of the Tax Law for the Year 1976 :
and under Chapter 46, Title T of the Administrative
Code of the City of New York for the Years 1977 :
and 1978.

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 5th day of October, 1984, he served the within notice of Decision by certified mail upon Laurance S. Rockefeller the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Laurance S. Rockefeller
30 Rockefeller Plaza, Room 5600
New York, NY 10112

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
5th day of October, 1984.

David Parchuck

James A. H. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of

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for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under
Article 22 of the Tax Law for the Years 1976 :
through 1978 and New York City Personal Income Tax
under Article 30 of the Tax Law for the Year 1976 :
and under Chapter 46, Title T of the Administrative
Code of the City of New York for the Years 1977 :
and 1978.

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 5th day of October, 1984, he served the within notice of Decision by certified mail upon Edward J. P. Zimmerman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward J. P. Zimmerman
30 Rockefeller Plaza, Room 5600
New York, NY 10112

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
5th day of October, 1984.

David Parchuck

James P. [Signature]

Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Laurance S. Rockefeller
30 Rockefeller Plaza, Room 5600
New York, NY 10112

Dear Mr. Rockefeller:

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, 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
Edward J. P. Zimmerman
30 Rockefeller Plaza, Room 5600
New York, NY 10112
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LAURANCE S. ROCKEFELLER	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law for the Years	:	
1976 through 1978 and New York City Personal	:	
Income Tax under Article 30 of the Tax Law for	:	
the Year 1976 and under Chapter 46, Title T of	:	
the Administrative Code of the City of New York	:	
for the Years 1977 and 1978.	:	

Petitioner, Laurance S. Rockefeller, 30 Rockefeller Plaza, Room 5600, New York, New York 10112, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1976 through 1978 and New York City personal income tax under Article 30 of the Tax Law for the year 1976 and under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1977 and 1978 (File Nos. 29540, 33615, 34136 and 35793).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 13, 1983 at 9:30 A.M., with all briefs to be submitted by December 2, 1983. Petitioner appeared by Edward J. P. Zimmerman, Esq. and David G. Fernald, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUES

I. Whether it was proper for petitioner to use New York adjusted gross income as a base against which he determined excess itemized deductions representing an item of tax preference.

II. Whether petitioner properly determined the modification for allocable expenses attributable to items of tax preference for the years 1976 and 1977.

III. Whether petitioner, for purposes of determining New York State/City minimum income taxes, properly subtracted (i) his New York State/City personal income taxes (for each of the years at issue) and (ii) an amount equalling the modification for allocable expenses attributable to items of tax preference (for 1976 and 1977).

FINDINGS OF FACT

Petitioner, by his representative, Edward J. P. Zimmerman, Esq., and the Audit Division by its representative, John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel) entered into an undated stipulation of facts (Exhibit "G", herein) which is incorporated into and made a part of this decision.

1. Petitioner, Laurance S. Rockefeller, timely filed New York State/City income tax returns for each of the years at issue. Attached to each return was a New York State Minimum Income Tax Computation Schedule on which he subtracted New York State/City income taxes of \$97,219, \$794,105 and \$881,189 for 1976, 1977 and 1978, respectively, and an amount equal to the modification of allocable expenses attributable to items of tax preference of \$444,725 and \$593,315 for

1976 and 1977, respectively,¹ in determining his total items of tax preference subject to minimum income tax. In addition, in determining excess itemized deductions, petitioner used a base of 60 percent of his New York adjusted gross income instead of 60 percent of his Federal adjusted gross income.

As a result, Mr. Rockefeller reported New York State minimum income tax due of \$44,930, \$55,095 and \$107,893 for the years 1976, 1977 and 1978, respectively, and New York City minimum income tax due of \$18,721, \$22,956 and \$44,956 for the years 1976, 1977 and 1978, respectively.

2. For example, petitioner calculated his excess itemized deductions for 1976 as follows. His starting point was his 1976 Federal adjusted gross income which was \$4,600,432. He then utilized Tax Law §612 (which prescribes certain additions and subtractions to Federal adjusted gross income) to determine his New York adjusted gross income which was calculated to be \$4,989,149. Petitioner then utilized 60 percent of his New York adjusted gross income to calculate excess itemized deductions. To compute excess itemized deductions for New York State tax purposes, petitioner subtracted (i) his deductions for state and local income taxes of \$97,219 taken on his Federal return, and (ii) an amount

¹ During 1976 and 1977, Tax Law §615(c)(4) and New York City Administrative Code §T46-115.0(c)(4) provided that a resident individual's federal itemized deductions were to be reduced by the modification for allocable expenses attributable to items of tax preference as defined in Tax Law §623 and New York City Administrative Code §T46-123.0 when computing his New York State/City itemized deductions.

equal to the modification of allocable expenses of \$444,725² from his Federal itemized deductions of \$4,353,629 resulting in \$3,811,685 of which \$818,196 is in excess of 60 percent of \$4,989,149 (his New York adjusted gross income).

3. The Audit Division issued three statements of audit changes against petitioner, Laurance S. Rockefeller, alleging additional New York State/City personal income tax and minimum income tax due as follows:

<u>Date of Statement</u>	<u>Taxable Year</u>	<u>Amount of Tax Alleged Due</u>
February 7, 1980	1976	\$116,708.43 plus interest
November 6, 1980	1977	\$232,215.00 plus interest
December 5, 1980	1978	\$122,411.65 plus interest

The Audit Division adjusted petitioner's excess itemized deductions to the amounts that were reported on his Federal tax return. According to the Audit Division, under Tax Law §622(b), the items of tax preference reportable to New York are the same as the items of tax preference reported for Federal tax purposes.

4. The Audit Division issued three notices of deficiency against petitioner alleging additional New York State/City income tax due as follows:

² Petitioner utilized a quadratic equation which was solved mathematically to determine the amount of the modification for allocable expenses attributable to items of tax preference which he subtracted from the items of tax preference subject to minimum tax. According to the stipulation of the parties:

"Petitioner eliminated the modification of deductions from the items of tax preference, and, since the computation of the modification of deductions for allocable expenses includes items of tax preference, the same amount was eliminated from that computation. The amounts of these two eliminations were interdependent. In lieu of a determination by trial and error, the computation was made by means of algebraic formula, a quadratic equation $[X^2 - (E + G)(X) + (E)(G-A) = 0]$ which was solved mathematically."

This quadratic equation is explained in detail in the stipulation.

<u>Date of Notice</u>	<u>Tax Year</u>	<u>Amount</u>
March 3, 1980	1976	\$116,708.43 ³ plus interest
January 9, 1981	1977	\$171,427.00 ³ plus interest
September 10, 1981	1978	\$122,411.65 plus interest

On December 31, 1981, petitioner paid these alleged deficiencies in full including interest calculated up to the date of payment. Such payment was made without prejudice to petitioner's right to proceed with the matter herein.

5. Petitioner contends that the "Tax Benefit Rule" [I.R.C. §58(h)] applies to the computation of New York items of tax preference. Therefore, he argues that his federal itemized deductions should be reduced by the amount of New York State/City income taxes included in federal itemized deductions because such taxes are not deductible in computing New York taxable income. Petitioner also maintains that the federal itemized deductions should be reduced by the modification for allocable expenses attributable to items of tax preference because no tax benefit was derived therefrom, and that New York adjusted gross income should be used as a base to determine excess itemized deductions.

CONCLUSIONS OF LAW

A. That Tax Law §622 provides, in part, as follows:

"New York minimum taxable income of resident individual. --
(a) The New York minimum taxable income of a resident individual shall be the sum of 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 in the laws of the United States, of a resident individual, ...for the taxable year..."

³ The Audit Division failed to assert 1977 New York City income tax of \$60,788.00 in the Notice of Deficiency although such amount was noted as due in the Statement of Audit Changes for 1977.

B. That New York City Administrative Code §T46-122.0 contains essentially the same provision, as noted in Conclusion of Law "A", supra, with respect to the New York City minimum taxable income of a New York City resident individual.

C. That during the years at issue, the Tax Law and the New York City Administrative Code did not contain provisions which allowed a portion of New York State or New York City income taxes or the modification for allocable expenses attributable to items of tax preference to be deducted from federal items of tax preference in arriving at New York State and New York City items of tax preference. Furthermore, there was no authority in the Tax Law or the New York City Administrative Code which permitted the use of New York adjusted gross income in determining excess itemized deductions subject to New York State or New York City minimum income tax.

Tax Law §622(b)(5) and the New York City Administrative Code §T46-122.0(b)(5), which provide for the reduction of adjusted itemized deductions by a portion of income taxes includible therein, were added by Chapter 669 of the Laws of 1980. However, these amendments were effective June 30, 1980 and only applicable to taxable years beginning after December 31, 1979.

D. That the federal tax benefit rule under I.R.C. §58(h) is not applicable to the issues at hand. Marx v. State Tax Commission, __ A.D.2d __, Appellate Division, Third Department, July 12, 1984, Mahoney, J.


E. That, therefore, the petitioner incorrectly calculated his minimum income tax and modification for allocable expense attributable to tax preference items for the years at issue.

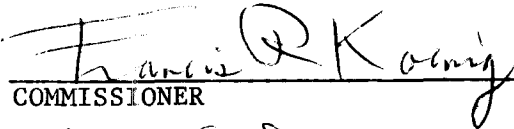
F. That the petition of Laurance S. Rockefeller is denied.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984


PRESIDENT


COMMISSIONER


COMMISSIONER