

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Fred R. Sullivan :  
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 Years 1977, :  
1978 & 1979. :

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AFFIDAVIT OF MAILING

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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Fred R. Sullivan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fred R. Sullivan  
857 Fifth Ave.  
New York, NY 10021

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  
18th day of January, 1984.

David Parchuck

James J. O'Connell  
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Fred R. Sullivan :

AFFIDAVIT OF MAILING

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 Years 1977,  
1978 and 1979. :

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 18th day of January, 1984, he served the within notice of Decision by certified mail upon John Evans, 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 Evans  
Arthur Andersen & Co.  
101 Eisenhower Pkwy.  
Roseland, NJ 07068

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  
18th day of January, 1984.

Daniel Parchuck

James R. Haglund  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Fred R. Sullivan  
857 Fifth Ave.  
New York, NY 10021

Dear Mr. Sullivan:

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: Petitioner's Representative  
John Evans  
Arthur Andersen & Co.  
101 Eisenhower Pkwy.  
Roseland, NJ 07068  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
FRED R. SULLIVAN	:	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 Years 1977, 1978 and 1979.	:	

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Petitioner, Fred R. Sullivan, 857 Fifth Avenue, New York, New York 10021, 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 years 1977, 1978 and 1979 (File Nos. 32925 and 34968).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1983 at 11:00 A.M. Petitioner appeared by Arthur Andersen & Co. (John N. Evans, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether the Federal item of tax preference for adjusted itemized deductions should be reduced or modified by the New York State and New York City income taxes included therein in arriving at New York items of tax preference.

FINDINGS OF FACT

1. On December 11, 1980, the Audit Division issued a Notice of Deficiency against petitioner, Fred R. Sullivan, in the amount of \$5,618.20 plus penalty and interest of \$2,148.42 for a total due of \$7,766.62 for the year 1977. A

Statement of Audit Changes issued September 5, 1979 explained that the "New York Tax Law contains no provision for modifying the Federal items of tax preference in connection with the adjusted itemized deductions."

2. On July 23, 1981, the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$2,299.99 plus penalty of \$251.98 and interest of \$181.71 for a total due of \$2,733.68 for the years 1978 and 1979. A Statement of Audit Changes issued December 18, 1980 explained, inter alia, that "the excess of Federal itemized deductions over 60%, but not over 100%, of Federal Adjusted Gross Income is an item of tax preference and subject to Minimum Income Tax on your 1978 Form IT-220." Petitioner is not contesting the changes made to his 1979 return.

3. For the years 1977 and 1978, in computing his New York State and City minimum taxes on items of tax preference, petitioner computed his preference for adjusted itemized deductions based on his New York State and New York City itemized deductions and adjusted gross income rather than the corresponding Federal figures resulting in lower tax liabilities than would have been due had the Federal figures been used.

4. The Audit Division argues that petitioner should have used the total Federal itemized deductions and compared them to sixty percent of his Federal adjusted gross income to determine adjusted itemized deductions for New York tax purposes.

5. Petitioner maintains that utilization of the Federal definition of tax preference causes an inequitable result since the Federal tax preference computation is based on income and deductions that do not reflect the various adjustments made to the Federal amounts to arrive at New York taxable income. Petitioner argues that, as a result, a tax is imposed on preference income

which does not exist for New York State purposes and from which no tax benefit is derived.

CONCLUSIONS OF LAW

A. That section 622 of the Tax Law, in pertinent part, provides:

"New York minimum taxable income of a resident individual. --  
(a) The New York Minimum taxable income of a resident individual... shall be the sum of the 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..."

Section T46-122.0 of Chapter 46, Title T of the Administrative Code of the City of New York contains a similar provision.

B. That during 1977 and 1978, section 57 of the Internal Revenue Code, in pertinent part, provided:

"Section 57. Items of Tax Preference.

(a) In General. - For purposes of this part, the items of tax preference are -

(1) Adjusted Itemized Deductions.-- An amount equal to the adjusted itemized deductions for the taxable year [as determined under subsection (b)].

\* \* \*

(b) Adjusted Itemized Deductions. -

(1) In General.-- For purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized deductions for any taxable year is the amount by which the sum of the deductions for the taxable year other than -

(A) deductions allowable in arriving at adjusted gross income,

(B) the deduction for personal exemptions provided by section 151,

(C) the deduction for medical, dental, etc. expenses provided by section 213, and

(D) the deduction for casualty losses described in section 165(c)(3),

exceeds 60 percent (but does not exceed 100 percent) of the taxpayer's adjusted gross income for the taxable year."

C. That in 1977 and 1978 there was no provision in the Tax Law which allowed a portion of New York State income taxes to be deducted from federal items of tax preference in arriving at New York items of tax preference. Section 622(b)(5) of the Tax Law and section T46-122.0 of Chapter 46, Title T, added by L. 1980, Ch. 669, effective June 30, 1980, and applicable to taxable years beginning after December 31, 1979, provide for the reduction of adjusted itemized deductions by a portion of the income taxes includable therein. Said amendments are not retroactive to the years in issue. There was no "authority by law or custom allowing the use of New York itemized deduction [sic] rather than the Federal itemized deductions for the purpose of computing excess itemized deductions." (Ross v. New York State Tax Commission, Sup. Ct., Albany County, May 10, 1983, Pennock, J. Contra, Winkelman v. State Tax Commission, Sup. Ct., Albany County, August 19, 1983, Williams, J.).

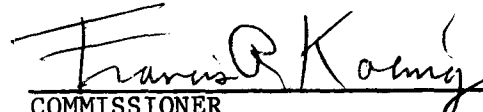
D. That the petition of Fred R. Sullivan is denied and the notices of deficiency issued December 11, 1980 and July 23, 1981 are sustained.


DATED: Albany, New York

JAN 18 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER