

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Samuel P., Jr. & Ruth M. Connor :  
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 :  
1980. :

AFFIDAVIT OF MAILING

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 7th day of November, 1985, he served the within notice of Decision by certified mail upon Samuel P., Jr. & Ruth M. Connor, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel P., Jr. & Ruth M. Connor  
3505 Elmwood Avenue  
Rochester, NY 14610

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  
7th day of November, 1985.

David Parchuck

Connie A. Hagelrud  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Samuel P., Jr. & Ruth M. Connor :  
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Tax under Article 22 of the Tax Law for the Year :  
1980. :

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AFFIDAVIT OF MAILING

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 7th day of November, 1985, he served the within notice of Decision by certified mail upon Robert S. Landman, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert S. Landman  
144 Exchange Street  
Rochester, NY 14614

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  
7th day of November, 1985.

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

November 7, 1985

Samuel P., Jr. & Ruth M. Connor  
3505 Elmwood Avenue  
Rochester, NY 14610

Dear Mr. & Mrs. Connor:

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  
Robert S. Landman  
144 Exchange Street  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
SAMUEL P. CONNOR, JR. AND RUTH M. CONNOR : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1980. :

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Petitioners, Samuel P. Connor, Jr. and Ruth M. Connor, 3505 Elmwood Avenue, Rochester, New York 14610, 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 1980 (File No. 50007).

On January 10, 1985, petitioners advised the State Tax Commission, in writing, that petitioners desired to waive a formal hearing and to submit the case to the State Tax Commission, with all briefs to be submitted by April 26, 1985. After due consideration of the record, the State Tax Commission hereby renders the following decision.

#### ISSUE

Whether petitioner Samuel P. Connor, Jr. was entitled to claim a net operating loss carryover on his separate 1980 New York State Income Tax return, where no such loss was claimed on petitioners' joint Federal return.

#### FINDINGS OF FACT

1. Petitioners, Samuel P. Connor, Jr. and Ruth M. Connor, filed a joint U.S. Individual Income Tax Return for 1979. On this return, petitioners reported a net capital gain of \$4,198.95. This amount arose from a combination of Mr. Connor's net capital losses and Mrs. Connor's net capital gains.

2. Petitioners filed separate New York State Income Tax resident returns on a combined form for the year 1979. On this return, petitioners reported a Federal capital gain of \$4,198.95. However, Mr. Connor reported a capital loss of \$1,500.00 and, in conjunction therewith, a long-term capital loss carryover of \$12,468.14. Mrs. Connor reported a capital gain of \$4,854.86.

3. Petitioners filed a joint U.S. Individual Income Tax Return for 1980. On this return, petitioners reported a capital gain of \$12,155.00.

4. Petitioners filed separate New York State Income Tax resident returns on a combined form for the year 1980. On this return, petitioners reported a Federal capital gain of \$12,155.00. However, Mr. Connor reported a capital gain of \$4,573.00 and Mrs. Connor reported a capital gain of \$2,595.00. The difference between the capital gain reported as the Federal amount and the sum of Mr. and Mrs. Connor's capital gain amounts reported to New York State, i.e., \$4,987.00, was attributable to Mr. Connor's application of his reported 1979 New York State capital loss carryforward to the capital gains reported on his 1980 New York State income tax return.

5. On January 5, 1984 the Audit Division issued a Notice of Deficiency to petitioners asserting a deficiency of personal income tax in the amount of \$949.49 plus interest of \$310.13 for a total amount due of \$1,259.62. The Statement of Audit Adjustment, which had previously been issued to Mr. Connor, explained, to the extent in issue, that the starting point in computing New York State personal income tax was petitioners' Federal adjusted gross income; and that since the long-term capital loss carryover was not utilized in computing the Federal joint capital gain of \$12,155.00, the long-term capital loss carryover could not be considered in calculating the separate capital gain amounts on the New York State personal income tax return.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section.

The modifications to income provided for in section 612 of the Tax Law are not applicable to the instant matter.

B. That section 612(f) of the Tax Law provides that:

"If husband and wife determine their federal income tax on a joint return but determine their New York income taxes separately, they shall determine their New York adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately."

C. That if petitioners had elected to file separate 1980 Federal income tax returns there would not have been any long-term capital loss carryover from 1979 available to be deducted on the separate 1980 Federal return. Since Mr. Connor was not entitled to deduct any capital losses on his 1980 Federal income tax return he was not entitled to deduct any capital losses on his 1980 separate New York State income tax return (20 NYCRR 116.6(d); Matter of Gurney v. Tully, 51 N.Y.2d 818, rev'g 67 A.D.2d 303; Matter of Rose Di Giacinto, State Tax Commission, January 31, 1984).

D. That since Mr. and Mrs. Connor filed separate New York State income tax returns and since there is no assertion that Mrs. Connor erroneously claimed a net operating loss deduction, the Audit Division should not have asserted a deficiency of personal income tax from Mrs. Connor.

E. That the petition of Samuel P. Connor, Jr. and Ruth M. Connor is granted to only the extent of Conclusion of Law "D" and the Audit Division is directed to cancel the Notice of Deficiency insofar as it asserts a deficiency

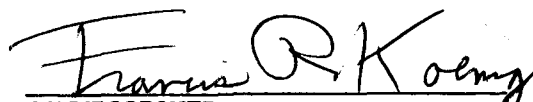
of personal income tax from Mrs. Connor; the Notice of Deficiency is, in all other respects, sustained.


DATED: Albany, New York

NOV 07 1985

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER