

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
David Rockefeller :
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 Years :
1976 & 1977. :
:

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon David Rockefeller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David 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
6th day of February, 1985.

David Parchuck

William P. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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In the Matter of the Petition :
of :
David Rockefeller :
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1976 & 1977. :
:

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 6th day of February, 1985, 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
6th day of February, 1985.

David Parchuck

Annie P. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

David 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 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	:	
DAVID 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 and 1977.	:	

Petitioner, David 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 and 1977 (File No. 29538).

A formal hearing¹ 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 that petitioner used New York adjusted gross income as a basis against which he determined excess itemized deductions representing an item of tax preference.

1 The hearing was a consolidated hearing concerning the petitions of David Rockefeller, Estate of John D. Rockefeller 3rd and Blanchette H. Rockefeller, Estate of Nelson A. Rockefeller, and Laurance S. Rockefeller. The parties had agreed that the State Tax Commission would issue a decision concerning the petition of Laurence S. Rockefeller only. As a

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 minimum income tax, properly subtracted (i) his New York State personal income taxes and (ii) an amount equalling the modification for allocable expenses attributable to items of tax preference.

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 "P", herein) which is incorporated into and made a part of this decision.

1. Petitioner, David Rockefeller, timely filed New York State income tax returns for each of the years at issue.² Attached to each return was a New York State Minimum Income Tax Computation Schedule on which he subtracted New York State income taxes of \$587,593 and \$401,779 for 1976 and 1977, respectively, and an amount equal to the modification of allocable expenses attributable to items of tax preference of \$51,269 and \$447,954 for 1976 and 1977,

result, a decision in the Matter of the Petition of Laurance S. Rockefeller was issued on October 5, 1984. However, at the request of petitioner's representative, separate decisions are now being issued with regard to the related matters.

2 For 1977, he later filed an amended return on which he reported an additional loss in the amount of \$378,470.00 which was not reported on the original return. References hereinafter to the 1977 tax return are to the return as amended.

respectively,³ 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 no New York State minimum income tax due for 1976 and \$47,791 New York State minimum income tax due for 1977.

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 \$7,718,107. 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 \$8,199,656. 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 income taxes of \$587,593 taken on his Federal return, and (ii) an amount equal to the modification of allocable expenses of \$51,269⁴ from his Federal itemized

3 During the years at issue, Tax Law §615(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 when computing his New York State itemized deductions.

4 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

deductions of \$5,688,671. He also added \$29 representing a "custody fee - out of state bonds" and \$511 for "amortization of bond premium - out of state bonds" to his Federal itemized deductions. The net result is an amount equal to \$5,050,349 of which \$130,555 is in excess of 60 percent of \$8,199,656 (his New York adjusted gross income).

3. On February 19, 1980, the Audit Division issued a Statement of Audit Changes against petitioner, David Rockefeller, alleging additional New York State personal income tax and minimum income tax due of \$83,973.00 plus interest and \$78,198.00 plus interest for 1976 and 1977, respectively. 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. On March 13, 1980, the Audit Division issued a Notice of Deficiency against petitioner alleging additional New York State income tax due of \$162,171.00 plus interest for the years at issue.

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 income taxes included in federal itemized deductions because

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.

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...."

B. That during the years at issue, the Tax Law did not contain provisions which allowed (i) a portion of New York State income taxes or (ii) 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 items of tax preference. Furthermore, there was no authority in the Tax Law which permitted the use of New York adjusted gross income in determining excess itemized deductions subject to New York State minimum income tax.

Tax Law §622(b)(5), which provides for the reduction of adjusted itemized deductions by a portion of income taxes includible therein, was added by Chapter 669 of the Laws of 1980. However, this amendment was effective June 30, 1980 and applicable only 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, 478 N.Y.S.2d 133.


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.

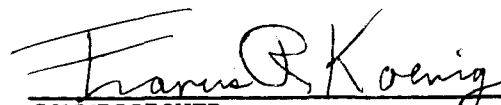
F. That the petition of David Rockefeller is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER