

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of John D. Rockefeller 3rd :
& Blanchette H. 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 and :
1977 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 Year 1977. :
:

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 Estate of John D. Rockefeller 3rd & Blanchette H. Rockefeller, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of John D. Rockefeller 3rd
& Blanchette H. 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

James P. Hagelmaad

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of John D. Rockefeller 3rd :
& Blanchette H. 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 and :
1977 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 Year 1977. :
:

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 petitioners 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

James P. Haysell
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Estate of John D. Rockefeller 3rd
& Blanchette H. Rockefeller
30 Rockefeller Plaza, Room 5600
New York, NY 10112

Dear Mrs. 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 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
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	:	
	:	
ESTATE OF JOHN D. ROCKEFELLER 3RD	:	DECISION
AND BLANCHETTE H. ROCKEFELLER	:	

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 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 Year 1977. :

Petitioners, Estate of John D. Rockefeller 3rd and Blanchette H. 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 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 year 1977 (File No. 29539).

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

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

York, on July 13, 1983 at 9:30 A.M., with all briefs to be submitted by December 2, 1983. Petitioners 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 the decedent of petitioner Estate of John D. Rockefeller 3rd and petitioner Blanchette H. Rockefeller used New York adjusted gross income as a base against which they determined excess itemized deductions representing an item of tax preference.

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

III. Whether they, for purposes of determining New York State/City minimum income taxes, properly subtracted (i) their New York State/City personal income taxes and (ii) an amount equalling the modification for allocable expenses attributable to items of tax preference.

FINDINGS OF FACT

Petitioners, by their 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 "X", herein) which is incorporated into and made a part of this decision.

1. John D. Rockefeller 3rd and Blanchette H. 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 they subtracted New York State/City income taxes of \$498,805 and \$791,521 for 1976 and 1977, respectively, and an amount equal to the modification of allocable expenses attributable to items of tax preference of \$138,462 and \$682

for 1976 and 1977, respectively,² in determining their total items of tax preference subject to minimum income tax. In addition, in determining excess itemized deductions, they used a base of 60 percent of their New York adjusted gross income instead of 60 percent of their Federal adjusted gross income.

As a result, the petitioners reported no New York State/City minimum income tax due for the years at issue.

2. For example, petitioners calculated their excess itemized deductions for 1976 as follows. Their starting point was their 1976 Federal adjusted gross income which was \$9,571,147. They then utilized Tax Law §612 (which prescribes certain additions and subtractions to Federal adjusted gross income) to determine their New York adjusted gross income which was calculated to be \$9,390,696. Petitioners then utilized 60 percent of their New York adjusted gross income to calculate excess itemized deductions. To compute excess itemized deductions for New York State tax purposes, petitioner subtracted (i) their deductions for state and local income taxes of \$498,805 taken on their Federal return, and (ii) an amount equal to the modification of allocable expenses of \$138,462³ from their Federal itemized deductions of \$6,538,340

2 During 1976 and 1977, Tax Law §615(c)(4) and New York City Administrative Code §T46-115.0(c)(4) provided that resident individuals' 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 their New York State/City itemized deductions.

3 Petitioners 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 they subtracted from the items of tax preference subject to minimum tax. According to the stipulation of the parties:

resulting in \$5,898,042⁴ of which \$263,624 is in excess of 60 percent of \$9,390,696 (their New York adjusted gross income).

3. On February 19, 1980, the Audit Division issued a Statement of Audit Changes against John D. Rockefeller 3rd and Blanchette H. Rockefeller alleging additional New York State/City personal income tax and minimum income tax due of \$197,006.00 plus interest for the years at issue. The Audit Division adjusted petitioners' excess itemized deductions to the amounts that were reported on their 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 John D. Rockefeller 3rd and Blanchette H. Rockefeller alleging additional New York State/City income tax due of \$197,006.00 plus interest for the years at issue.

5. Petitioners contend that the "Tax Benefit Rule" [I.R.C. §58(h)] applies to the computation of New York items of tax preference. Therefore,

"Petitioners 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.

4 Petitioners also subtracted \$3,031 from their Federal itemized deductions which represents "Custody fee - re federal interest."

they argue that their 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. Petitioners also maintain 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 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 New York City resident individuals.

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 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 petitioners incorrectly calculated their minimum income tax and modification for allocable expense attributable to tax preference items for the years at issue.


F. That the petition of Estate of John D. Rockefeller 3rd and Blanchette H. Rockefeller is denied and the Notice of Deficiency is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER