

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Estate of Nelson A. 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 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 Nelson A. Rockefeller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Nelson A. Rockefeller  
30 Rockefeller Plaza, Rm. 5600  
New York, NY 10020

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. Delaney  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of  
Estate of Nelson A. Rockefeller :

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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 and 1977 and :  
New York City Personal Income Tax 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 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, Rm. 5600  
New York, NY 10020

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

Conrad 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

Estate of Nelson A. Rockefeller  
30 Rockefeller Plaza, Rm. 5600  
New York, NY 10020

Gentlemen:

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, Rm. 5600  
New York, NY 10020  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ESTATE OF NELSON A. 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 and New York City Personal	:	
Income Tax under Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the Year 1977.	:	

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Petitioner, Estate of Nelson A. 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 Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 28094).<sup>1</sup>

A formal hearing<sup>2</sup> was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New

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1 The Audit Division offset overpayments of tax in 1974 and 1975 against the alleged deficiencies in tax for 1976 and 1977.

2 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 petitioner's 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. 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's decedent used New York adjusted gross income as a base against which he determined excess itemized deductions representing an item of tax preference.

II. Whether petitioner's decedent, for purposes of determining New York State/City<sup>3</sup> minimum income taxes, properly subtracted (i) his 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

Petitioner, by its 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 "HH", herein) which is incorporated into and made a part of this decision.

1. Petitioner's decedent, Nelson A. Rockefeller, filed a New York State income tax return for 1976 and a New York State/City income tax return for 1977.<sup>4</sup> Attached to each return was a New York State Minimum Income Tax

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3 New York City minimum income tax is at issue for 1977 only.

4 Because New York City minimum income tax is at issue for 1977, it is reasonable to assume that petitioner's decedent filed a New York State/City income tax return for 1977. It is also reasonable to assume that petitioner's decedent filed only a New York State income tax return

Computation Schedule<sup>5</sup> on which he subtracted (i) New York State income taxes of \$892,631 for 1976, and (ii) New York State/City income taxes of \$560,202 for 1977. He also subtracted an amount equal to the modification of allocable expenses attributable to items of tax preference of \$272,653 and \$520,859 for 1976 and 1977, respectively,<sup>6</sup> in determining his total items of tax preference subject to minimum income tax. In addition, in determining excess itemized deductions, petitioner's decedent 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 \$21,575 and \$58,493 for the years 1976 and 1977, respectively, and New York City minimum income tax due of \$24,372 for 1977.

2. For example, petitioner's decedent calculated his excess itemized deductions for 1976 as follows. His starting point was his 1976 Federal

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for 1976 because New York City minimum income tax is not at issue for 1976. It is not possible to verify these assumptions because, in lieu of the introduction of the relevant tax returns, the parties stipulated to "relevant figure employed by the Audit Division" to calculate the alleged deficiencies. In addition, petitioner's decedent later filed amended tax returns. References hereinafter to the tax returns are to the returns as amended.

5 The New York State Minimum Income Tax Computation Schedules filed by petitioner's decedent were later amended, and references herein are to the amended schedules.

6 During the years at issue, 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.

adjusted gross income which was \$4,670,910. 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 \$4,970,388. Petitioner's decedent 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's decedent subtracted (i) his deductions for state and local income taxes of \$892,631 taken on his Federal return, and (ii) an amount equal to the modification of allocable expenses of \$272,653<sup>7</sup> from his Federal itemized deductions of \$4,514,319 resulting in \$3,349,035 of which \$366,802 is in excess of 60 percent of \$4,970,388 (his New York adjusted gross income).

3. On November 22, 1978, the Audit Division issued two statements of audit changes against petitioner, Estate of Nelson A. Rockefeller. One alleged additional New York State personal income tax and minimum income tax due of

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7 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.

\$137,972.00 plus interest for 1976 (after offsetting overpayments allowed of \$5,629 and \$637 for 1974 and 1975, respectively). The other alleged additional New York State/City personal income tax and minimum income tax due of \$232,825.00 plus interest. The Audit Division adjusted the excess itemized deductions of petitioner's decedent 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 August 17, 1979, the Audit Division issued a Notice of Deficiency against petitioner alleging additional New York State/City income tax due of \$370,797 plus interest.

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, it argues that the 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...."

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 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's decedent incorrectly calculated his minimum income tax and modification for allocable expense attributable to tax preference items for the years at issue.

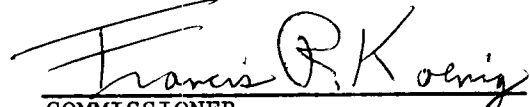
F. That the petition of Estate of Nelson A. Rockefeller is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

FEB 06 1985

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER