

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Jack J. Dreyfus, Jr. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article(s) 22 of the Tax Law for the :  
Year 1972. :  
\_\_\_\_\_ :

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 7th day of October, 1986, he/she served the within notice of Decision by certified mail upon Jack J. Dreyfus, Jr. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

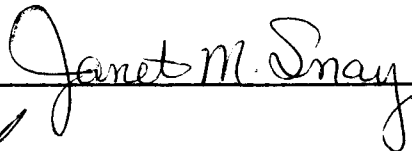
Jack J. Dreyfus, Jr.  
c/o Lopez, Edwards, Frank & Co.  
205 W. 34th St., Suite 2505  
New York, NY 10001

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 October, 1986.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
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STATE OF NEW YORK

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Year 1972. :  
\_\_\_\_\_ :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 7th day of October, 1986, he served the within notice of Decision by certified mail upon Burton L. Shepard, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Burton L. Shepard  
Lopez, Edwards, Frank & Co.  
205 W. 34th St., Suite 2505  
New York, NY 10001

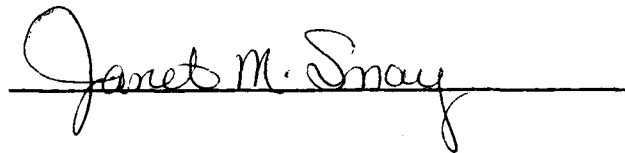
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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 October, 1986.



Authorized to administer oaths  
pursuant to Tax Law section 174



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

October 7, 1986

Jack J. Dreyfus, Jr.  
c/o Lopez, Edwards, Frank & Co.  
205 W. 34th St., Suite 2505  
New York, NY 10001

Dear Mr. Dreyfus:

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Burton L. Shepard  
Lopez, Edwards, Frank & Co.  
205 W. 34th St., Suite 2505  
New York, NY 10001

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JACK J. DREYFUS, JR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

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Petitioner, Jack J. Dreyfus, Jr., c/o Lopez, Edwards, Frank & Co., 205 West 34th Street, Suite 2505, New York, New York 10001, 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 1972 (File No. 46495).

On January 28, 1986, petitioner advised the State Tax Commission, in writing, that he desired to waive a hearing and to submit the case to the State Tax Commission, with all briefs and documents to be submitted by May 24, 1986. After due consideration of the entire file, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner's claimed net operating loss carryback was properly disallowed by the Audit Division.

FINDINGS OF FACT

1. Jack J. Dreyfus, Jr. (hereinafter "petitioner") filed a New York State Income Tax Resident Return for the year 1972 whereon he reported a total tax liability of \$191,022.04, of which \$74,175.43 consisted of minimum income tax.
2. Petitioner's 1972 federal income tax return reported a taxable income of \$85,978.86 and a total tax liability of \$179,797.69, which was comprised of personal income tax of \$15,130.11 and minimum income tax of \$164,667.58.

3. Based on an audit of petitioner's 1972 Federal return, the Internal Revenue Service made the following adjustments:

Deductions disallowed:	
Legal fees	\$ 30,000.00
Trade and business expenses	3,985.00
Contributions	364,058.00
	<u>\$398,043.00</u>
Additional loss allowed:	
Section 1231 loss	<u>(\$853,976.00)</u>
Net Adjustment	<u><u>(\$455,933.00)</u></u>

4. As the result of the aforestated adjustments, petitioner's 1972 federal taxable income was reduced to a negative amount and his federal personal income tax was reduced from \$15,130.11 to zero.

5. In computing petitioner's revised 1972 federal minimum income tax, the Internal Revenue Service reduced his items of tax preference by a net operating loss carryback from 1975 of \$373,173.00. Said loss was not considered in the revision of petitioner's federal personal income tax for 1972 (see Finding of Fact "3", supra).

6. On August 3, 1979, petitioner filed a Claim for Credit or Refund of Personal Income Tax. In conjunction therewith, he filed a form IT-115 and a form IT-115.1 whereon he reported the aforestated federal audit changes for New York State personal and minimum income tax purposes, respectively.

7. Petitioner's claim for refund was in the total amount of \$144,654.00. In recomputing his New York State personal income tax refund due, petitioner claimed the net operating loss carryback of \$373,173.00, in addition to the aforestated adjustments made by the Internal Revenue Service. As was done for federal purposes, petitioner used the net operating loss carryback in recomputing his 1972 New York State minimum income tax refund due.

8. On October 1, 1980, the Audit Division issued a Notice of Partial Disallowance to petitioner whereon his refund claim of \$144,654.00 was allowed to the extent of \$123,442.48. In a Voucher for Income Tax Refund attached thereto, the Audit Division's basis for partial disallowance of petitioner's refund claim was explained as follows:

"Refund is authorized based on the total Federal adjustment of \$455,933.00 as shown on the photocopy of Federal Form 4549.

A net operating loss deduction is computed the same for New York State tax purposes as for Federal tax purposes but the deduction cannot exceed Federal taxable income. Federal Form 4549 shows there was no taxable income, therefore, there is no allowable net operating loss deduction to be carried back from 1975 to the tax year 1972."

9. In computing petitioner's allowable refund, said net operating loss carryback was allowed for purposes of revising his New York State minimum income tax liability.

#### 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."

B. That section 612(c) of the Tax Law provides for modifications decreasing federal adjusted gross income. None of the modifications permit a deduction for a net operating loss carryback. Accordingly, petitioner could only obtain such benefit if it was allowed for federal income tax purposes.

C. That petitioner's 1972 federal income tax audit changes (see Finding of Fact "3", supra) clearly do not include an adjustment for the 1975 net operating loss carryback for federal income tax purposes. Such carryback was allowed only for purposes of federal minimum income tax. Accordingly such

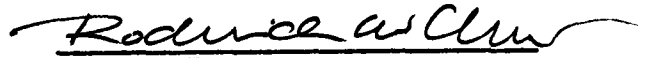
carryback cannot be allowed for New York State personal income tax purposes,  
but may only be allowed for New York State minimum income tax purposes.

D. That the petition of Jack J. Dreyfus is denied and the Notice of  
Partial Disallowance issued October 1, 1980 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER