Alaimo, Joseph W + Charlotte
Personal Income
1971

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH W. AND CHARLOTTE ALAIMO

For a Redetermination of a Deficiency or a Refund of Personal Income Taxes under Article(s) 22 of the Tax Law for the (Year(s) 1962

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of August, 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Joseph W. and Charlotte Alaimo (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph W. and Charlotte Alaimo
18 Wide Waters Lane
Pittsford, New York 14534

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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
23rd day of August, 1971.

Rae Zimmerman

Martha Funaro

Alaimo, Joseph - Charlotte
Personal Income
1971

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH W. AND CHARLOTTE ALAIMO

For a Redetermination of a Deficiency or a Refund of Personal Income Taxes under Article(s) 22 of the Tax Law for the (Year(s)1962

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of August , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Joseph W. and Charlotte Alaimo (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph W. and Charlotte Alaimo
175 Alaimo Drive
Rochester, New York 14625

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

12th day of August , 1971.

Rae Zimmerman

Marilyn Turner

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

JOSEPH W. AND CHARLOTTE ALAIMO : DECISION

for Redetermination of a Deficiency or for Refund of Personal Income Taxes under Article 22 of the Tax Law for the Year 1962. :

The taxpayers, Joseph W. and Charlotte Alaimo, having filed a petition for redetermination of deficiency of personal income taxes under Article 22 of the Tax Law for the year 1962, and a hearing having been held at the office of the State Tax Commission, 115 Main Street East, Rochester, New York, on August 8, 1967, before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance.

ISSUE

The issue is whether income tax averaging as provided in the Federal tax law is also authorized by State law.

FINDINGS OF FACT

The State Tax Commission hereby finds:

1. That the petitioner filed a New York State resident income tax return for the year 1962, reporting income of $43,744.82 received in October of that year which they sought to average over a period of five previous years.

2. That taxpayers claim that section 612 of the Tax Law, which provides that, "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," includes the provision for averaging, contained in section 1301 of the Internal Revenue Code of 1954.

CONCLUSIONS OF LAW

Based upon the foregoing findings, the State Tax Commission hereby,

DECIDES:

A. That the said section 1301 of the Internal Revenue Code of 1954 applies to computation of tax and not computation of gross income and has no counterpart in Article 22 of the Tax Law.

B. That the proposed averaging of income over five years is incorrect and unauthorized.

C. That the Notice of Deficiency for determining additional income tax due for the year 1962 is correct and is hereby affirmed together with any additional interest and other amounts which may be lawfully due and owing thereon.

D. That the taxpayer's petition for redetermination of deficiency for the year 1962 be and the same is hereby denied.

DATED: Albany, New York
August 13, 1971

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER

L 9 (6-70)

BUREAU OF LAW
MEMORANDUM

TO: Commissioners Gallman, [illegible] and [illegible]

FROM: Saul Heckelman, Director

SUBJECT: Joseph W. Alaimo and Charlotte Alaimo vs. State Tax Commission

Attached is a copy of Supreme Court Justice Mahoney's decision, dated March 28, 1972, dismissing the taxpayers' petition and sustaining the Tax Commission's August 12, 1971 decision that income averaging under Section 1301 of the Internal Revenue Code of 1954 applies to computation of tax and not computation of gross income and has no counterpart in Article 22 of the Tax Law.

I will advise you as to whether an appeal is taken.

Director

[illegible]
Enc.
April 27, 1972

8/12/71 - 22

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

* *

In the Matter of the Application of
JOSEPH W. ALAIMO and CHARLOTTE ALAIMO,

Petitioners,

- against -

THE STATE TAX COMMISSION OF THE
STATE OF NEW YORK,

Respondent.

To review a determination made after a hearing in the matter of personal income taxes under Article 22 of the Tax Law for the year 1962.

* *

(Supreme Court, Albany County Special Term, February 25, 1972)
(Justice A. Franklin Mahoney, Presiding)

APPEARANCES:

ALAIMO & BURGESS, ESQS.
Attorneys for Petitioners

HON. LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent
(Thomas P. Zolezzi, Esq. and
Lawrence L. Doolittle, Esq.
Assistant Attorneys General,
of Counsel)

MAHONEY, J.

In this proceeding authorized by section 690 of the Tax Law of the State of New York (inaccurately labeled an Article 78 review *) petitioner seeks a review of the determination of the State Tax Commission that there was a deficiency due from him for personal income taxes for 1962 based on a holding that section 1301 of the Federal Internal Revenue Code which permits "income averaging" has no counterpart in Article 22 of the Tax Law of this State and is not incorporated by reference into the Tax Law by the provisions of section 612 thereof.

Petitioner, an attorney, on October 8, 1962, received a fee for professional services rendered over a period of six years in the amount of $43,744.82. Since this substantial fee would inflate his 1962 income, in comparison with prior years, he sought to avail himself of the provisions of 26 U.S.C.§1301 by recomputing the federal tax due for the prior years. Without passing on the correctness of the method employed to recompute, it is enough for the purpose of this judicial review to state that petitioner, in his 1962 State income tax return, attempted to apply the Federally permissible tax spreading to his State tax liability for that year.

Petitioner's reasoning for the correctness of his

* The date of notice of decision of respondent was August 12, 1971. Petitioner made personal service of notice of petition and petition on respondent on Dec. 22, 1971, 10 days beyond the 4 month statutory limitation provided for in §690(e) of the Tax Law.

position is unique and requires comment because it is representative of the taxpayer's unending search for ways to avoid the ever-increasing burden of taxes. In 1959 a study group, appointed by the Legislature, recommended that the State base its State personal income tax on the same income reported in the Federal return of the taxpayer. The Legislature responded by passing section 612 of the Tax Law (Laws of 1960, Chapter 563, effective April 18, 1960) which, so far as pertinent here, states: "New York Adjusted Gross Income. A. General. 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." Next, Congress, in passing the Revenue Code of 1954, enacted section 1301 of the United States Code which, in pertinent part, reads as follows: "§1301. Compensation from an employment; (a) Limitation on tax ... if an individual ... (1) engages in an employment, and (3) the gross compensation from the employment received or accrued in the taxable year of the individual ... is not less than 80 percent of the total compensation from such employment, ... then the tax attributable to any part of the compensation which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes

the date of such receipt or accrual ..." The application of this "income averaging" statute to petitioner's 1962 Federal income tax return markedly reduced the Federal adjusted gross income for that year and, petitioner argues, the State is now obligated by the terms of section 612 of the Tax Law to base its tax assessment for the same year on the same adjusted gross income.

It is with regret that this argument must be rejected. Section 61 of Chapter 26 of the United States Code defines "gross income" as "all income from whatever source derived, including (but not limited to) the following items: (1) compensation for services, including fees, commissions, and similar items ..." Section 62 of the Code defines "adjusted gross income" as "gross income minus the following deductions ..." Section 1301 of the Code does not alter or change in any way the above definitions but only establishes a pattern of taxing that portion of the adjusted gross income which can be identified as having been earned over a period in excess of 36 months and which represents eighty percent or more of the total compensation received from such employment. (emphasis supplied) In this case the $43,744.82 fee was received in a single payment in 1962; it represents more than 80% of the total compensation for the professional services rendered and it was earned over a period in excess of 36 months. However, the language of

section 1301 of the Federal Code compels the inclusion in the gross income of that part of the fee (in this case the whole fee) received in the year covered by the tax return. No other conclusion can be reached from the language of section 1301 that states, "then the tax attributable to any part of the compensation which is included in the gross income (emphasis supplied) of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual." It follows that if the fee received in 1962 were not included in the "gross income" of the Federal return and thereby reflected in the "adjusted gross income" it would be impossible to compute the tax "attributable" to the fee in 1962 and to determine if such tax would be greater if the fee had been reported "ratably" over the period earned. Looked at in this light it must be said that §1301 is for tax computation rather than income computation.

Petitioner's argument also overlooks the impact of section 22 of Article III of the New York State Constitution, effective January 1, 1960, which reads in part: "Notwithstanding ... any other provision of this constitution, the Legislature, in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on,

in respect to or by which such tax or taxes are imposed or measured, by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision." Clearly, the State may define the income upon which it intends to levy a tax and may do so by reference to any law of the United States. It has done so in the language of section 612 of the Tax Law which specifically refers to the Federal definitions (26 U.S.C. §§ 61, 62) of "gross income" and "adjusted gross income". The provisions of section 1301 of the Code, for the reasons given above, do not alter or change these definitions.

The petition is dismissed.

Submit Order.

Dated: Troy, New York
March 28, 1972

AD 32 (9-68) 50M

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12226

Revoked
re 18 Wade Waterstone
petitioned req 1534
with 8/23/71 letter
new corporation
+ new affidavit.

CERTIFIED

No. 592126

MAIL

REASON CHECKED

Unclaimed____ Refused____

Unknown_____

Insufficient address_____

Moved, Left no address____

No such post office in state__

Do not remail in this envelope

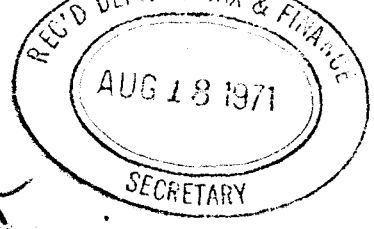
Rtd
aug 18, 1971

Joseph W. and Charlotte Alaimo

~~175 Alaimo Drive~~

Rochester, New York ~~14625~~

☐ Moved, left no address
☐ No such number
☒ Moved, not forwardable
☐ Addressee unknown



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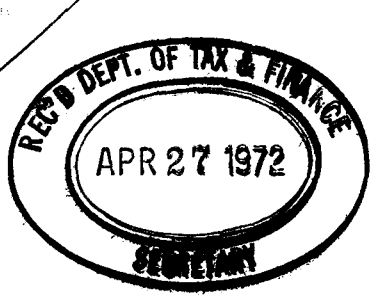
L-9 (5/71)

BUREAU OF LAW
MEMORANDUM



TO

FROM :

SUBJECT:

[redacted]

Supplementing my April 17, 1972 memorandum with regard to the above Article 78 proceeding, I have been informed by the Attorney General's office that the petitioners have filed a timely Notice of Appeal from the order of the Supreme Court, Albany County in the above case, based on Justice Mahoney's decision of March 28, 1972.

[redacted]

JB:ib/mlf
April 26, 1972

cc: [redacted]