

STATE OF NEW YORK
STATE TAX COMMISSION

*Fox, Philip & Edna
Personal Income
(1971)*

In the Matter of the Petition

of

PHILIP & EDNA FOX

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, 1963 &
1964

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

State of New York
County of Albany

Martha Funaro , 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 27th day of October , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Philip &
Edna Fox (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Philip & Edna Fox
146 Pembroke Street
Brooklyn, New York 11201

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

27th day of October , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP & EDNA FOX

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
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State of New York
County of Albany

Martha Funaro , 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 27th day of October , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Reuben Sasanow

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Reuben Sasanow
10 East 40th Street
New York, New York 10016

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

27th day of October , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
PHILIP AND EDNA FOX : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Years 1962, 1963 and 1964. :

Philip and Edna Fox filed a petition for refund of personal income taxes paid under Article 22 of the Tax Law for the years 1962, 1963 and 1964. A hearing was duly held on November 16, 1970, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York. The petitioners were not present but appeared by Reuben Sasanow, C.P.A. The Income Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the petitioner may, under section 612(c)(J) of the Tax Law, amortize a lease hold by a greater amount on his New York return than on his Federal return when he has a higher New York cost basis by reason of a transaction previously taxed under Article 16 of the Tax Law which was not taxed under the Internal Revenue Code.

FINDINGS OF FACT

1. The petitioner, Philip Fox, is part owner of a lease which in turn is sublet to produce rental income. Petitioner acquired the lease on March 31, 1959, upon the liquidation of the Spencer Operating Corporation of which he was a stockholder.

2. For New York tax purposes, the liquidation of the Spencer Operating Corporation was treated as a taxable exchange of shares for property under Article 16 of the Tax Law resulting in a taxable gain to petitioner and a tax cost basis of the lease of the fair market value of such lease at that time. On his one return

under Article 16 he was allowed to amortize such tax cost basis.

3. For Federal tax purposes, the liquidation of the Spencer Operating Corporation was treated as a nontaxable one-month liquidation under section 333 of the Internal Revenue Code with the result that the tax cost basis of the lease was carried over from the tax cost basis of the shares in the company. Such basis was much lower than the fair market value of the lease.

4. Petitioner has a higher tax cost basis for the lease under New York law than under Federal law. On his Federal return, he is allowed to amortize his Federal tax cost basis over the life of the lease.

CONCLUSIONS OF LAW

The petitioner is not entitled to the increased amortization. Under section 612(c)(5) there must be an item of income or gain which would be subject to double taxation. Here the previous gain on the exchange of the corporate stock is different from either the amortization deduction or the increased rental income which would result if such deduction was allowed. Section 612(c)(4) of the Tax Law relating to different tax basis under Federal and State law would not apply in the current year because of a lack of a sale or disposition of the asset, although it would appear that such provision would apply in the year of termination of the lease so that the remaining unamortized cost basis would either reduce any gain or increase any loss in that year.

DECISION

The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due pursuant to section 684 of the Tax Law.

DATED: Albany, New York

October 27, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER