

Wheeler Paul G. & Marie I.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Paul G. & Marie I. Wheeler
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) 1963

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

State of New York
County of Albany

Claire A. Draves, 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 13th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Paul G. & Marie I. Wheeler (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Paul G. Wheeler & Marie I. Wheeler
9 Frantone Lane
Loudonville, New York 12211

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
13th day of January, 1971.

Linda Wilson
Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
PAUL G. AND MARIE J. WHEELER : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the year 1963 :

Taxpayers petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1963. A formal hearing was held before Lawrence A. Newman, Hearing Officer, at the offices of the State Tax Commission in the City of Albany on December 18, 1969. The petitioner appeared per se. The Income Tax Bureau was represented by Edward H. Best, Esq. (Solomon Sies, Esq. of counsel).

FINDINGS OF FACT

1. Taxpayers filed a joint New York State Income Tax Resident Return for the year 1963.

2. On September 13, 1965, a notice of deficiency was issued by the Department of Taxation and Finance file numbered 3-4542642 for the year 1963 totalling \$90.89 plus statutory interest.

The deficiency was based on a finding by the Income Tax Bureau that a loss claimed of \$1,140.85 on the sale of a personal residence is not allowed as a modification of federal adjusted gross income.

3. Paul G. Wheeler owned a residence in and was a resident of the State of New Jersey. Thereafter, he moved his domicile to Utica, New York. He sold his residence in New Jersey while still a resident there in 1956 and deferred the capital gain on the sale of that property for federal income tax purposes. Thereafter taxpayer bought a new residence in Utica, New York, and shortly thereafter, endeavored to sell this residence. However, taxpayer could not readily sell the Utica residence. He rented the property to another

family and also purchased a residence for himself in Loudonville, New York.

4. Taxpayer concedes the gain or loss on the sale of the Utica property is reportable as it is income-producing property and no longer a residence. However, taxpayer claims a modification of federal net income for 1963 to take into account a higher cost basis of the property for New York State taxing purposes. Taxpayer contends that since the sale of the New Jersey residence while he was a non-resident was not reportable to New York State, the gain on the sale of the New Jersey residence should not be deferred but added to the cost basis of the Utica property.

5. Taxpayers did not report any gain from the sale of property on their 1963 Federal Income Tax Return.

6. Tax Law Section 612 provides that the New York adjusted gross income of a resident individual shall be the same as his federal adjusted gross income except for modifications specified.

7. The loss claimed on the sale of the personal residence does not come within the modification specified in Section 612 of Article 22 of the Tax Law.

DECISION

A. Taxpayers are not entitled to a higher cost basis on the sale of personal residence as a modification of federal adjusted gross income.

B. The petition is denied, and the assessment is sustained.

DATED: Albany, New York
January 11, 1971

STATE TAX COMMISSION

Norman Galbraith
COMMISSIONER

Bruce W. Hensley
COMMISSIONER

Milton Korman
COMMISSIONER