

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE M. & GRACE Y. FRAUENHEIM :

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 16th day of May, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Grace M. & Grace Y. Frauenheim (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: George M. & Grace Y. Frauenheim
10 Ivyhurst Road
Buffalo, New York 14226
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

16th day of May, 1972.

Barbara F. Farnsworth

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE M. & GRACE Y. FRAUENHEIM :

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 16th day of May , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Peter J. Brevorka, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Peter J. Brevorka, Esq.
Jaekle, Fleischmann & Mugal
700 Liberty Bank Building
Buffalo, New York 14202
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

16th day of May , 19 72

Martha Furrow

Rae Zimmerman



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 16, 1972

George M. & Grace Y. Fraumenheim
10 Ivyhurst Road
Buffalo, New York 14226

Dear Sir and Madam:

Please take notice of the **Decision**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE M. & GRACE Y. FRAUENHEIM	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year	:	
1962.	:	

George M. and Grace Y. Frauenheim petitioned for a refund of personal income taxes for the year 1962 under Article 22 of the Tax Law. A formal hearing was held on May 21, 1971, at the State Office Building, Buffalo, New York, before L. Robert Leisner, Hearing Officer.

The petitioners were represented by Jaeckle, Fleischman, Kelly, Swart and Augsburger (Peter Brevorka, Esq., of Counsel) and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Was a 1963 reduction of \$100,000.00 of the sale price of a 1962 transaction allocable to the 1962 sale transaction or to 1963 where the taxpayers utilized an optional credit for the year 1963 pursuant to section 1341 of the Internal Revenue Code?

II. Does the New York State Tax Law afford tax treatment similar to the optional credit provided by section 1341 of the Internal Revenue Code?

1. Petitioners filed a claim for refund in the amount of \$5,000.00 for the year 1962.

2. The claim for refund was denied under File No. 3-3446935 on September 6, 1966, and the taxpayers timely petitioned for a formal hearing.

3. The taxpayers' petition was based on the fact that the taxpayers reported long term gain from the sale or exchange of property of \$1,039,584.60 or ordinary income of \$514,766.15. Later in 1963 in a controversy over the sale, the price was adjusted and reduced by \$100,000.00.

4. The taxpayers asserted that they should be permitted to decrease the capital gain income they received from the sale in 1962 or receive some type of treatment similar to the tax credit provided by section 1341 of the Internal Revenue Code. The Income Tax Bureau contended (1) the deduction was applicable to 1963, the year of the adjustment or repayment, under federal conformity and the "claim of right doctrine", and (2) there is no state tax credit similar to section 1341 of the Internal Revenue Code allowing an elective tax credit based on the earlier year's tax computation.

CONCLUSIONS OF LAW

A. The gain on the sale was recognized under "claim of right". The deduction of monies repaid is deductible only in the year of repayment. The deduction of a modification is deductible only in the year of modification. United States v Lewis, 340 U.S. 590 Healy v Commissioner, 345 U.S. 278.

B. Adjustment of the taxpayers' 1962 return cannot be permitted because the computation of federal tax under section 1341(a)(5) did not as a matter of law, change the amount of the taxpayers' federal adjusted gross income or itemized deduction for the year 1962.

C. The New York State Tax Law does not have an optional credit such as that provided by section 1341 of the Internal Revenue Code. Matter of George Kass, State Tax Com., Dec., Mar. 15, 1971.

D. Under the New York Tax Law applying federal conformity the taxpayers received a regular allowance of a long term capital loss for 1963 offset against the capital gain if any shown on their return for that year subject to the regular federal rules regarding limitations on net capital losses. The taxpayers received the maximum benefit permitted under the Tax Law.

E. The denial of the refund under File No. 3-3446935 is in all respects sustained.

DATED: Albany, New York

STATE TAX COMMISSION

May 16, 1972

Norman Gallman
COMMISSIONER

Bruce Pringley
COMMISSIONER

Milton Korman
COMMISSIONER