

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH H. BREWER

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

:
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) 1967, 1968 and :
1969.

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 20th day of August, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon JOSEPH H. BREWER

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Joseph H. Brewer
151 East 83rd Street
New York, New York 10028

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

20th day of August, 1974.

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
August 20, 1974

Mr. Joseph H. Brewer
151 East 83rd Street
New York, New York 10028

Dear Mr. Brewer:

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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| JOSEPH H. BREWER | : | DECISION |
| for Redetermination of a Deficiency | : | |
| or for Refund of Personal Income Taxes | : | |
| under Article 22 of the Tax Law | : | |
| for the Years 1967, 1968 and 1969. | : | |

Petitioner, Joseph H. Brewer, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1967, 1968 and 1969.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 10, 1973, at 1:30 P.M., before Nigel G. Wright, Hearing Officer. The taxpayer represented himself, and the Income Tax Bureau was represented by Saul Heckelman, Esq. (James A. Scott, Esq. of counsel).

ISSUE

May the taxable profit on the installment sale of stock in 1966, which had been held since 1934, be computed by using as the basis the value of the stock on December 31, 1959, so as to exclude from tax the increase in value of the stock prior to January 1, 1966, the effective date of Article 22 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Joseph H. Brewer, timely filed New York State income tax returns for the years 1967, 1968 and 1969.

2. A Notice of Determination of Deficiencies in personal income taxes for the years 1967, 1968 and 1969 was issued on February 22, 1971, against the taxpayer under File No. 9-46576802.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. Petitioner bought stock of the Hotel Morton Corporation in 1934 and sold it at a profit in 1966. He reported the capital gains on his Federal returns for 1967, 1968 and 1969. He excluded these gains on his New York returns for said years on the grounds that the entire profit on the stock had accrued before 1960. He used as his basis the 1959 fair market value of the stock.


CONCLUSIONS OF LAW

A. That the stock in question had the same basis for Federal and New York State tax purposes, such basis being the cost to petitioner in 1934. (Section 1012 of the Internal Revenue Code, Section 612(a) of the Tax Law). There is no authority in Section 612 of the Tax Law for a change in basis in this case.

B. That the petition of Joseph H. Brewer is denied and the Notice of Deficiency issued on February 22, 1971, is sustained.

DATED: Albany, New York
August 20, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER