

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARTIN H. PROYECT and NELLIE W. PROYECT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year ~~(xxxxxx Period)~~ 1972.:

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Martin H. & Nellie W.
Proyect (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Martin H. Proyect
33 Sutton Place
New York, New York 10005

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 Postal Service within the State of New York.

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

1st day of September, 1977.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

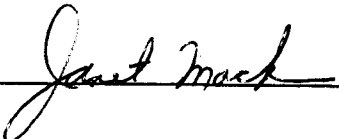
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Raymond S. Fersko

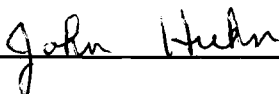
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Raymond S. Fersko, Esq.
Walsh and Levine
70 Pine Street
New York, New York 10005
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

1st day of September , 1977







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 1, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. & Mrs. Martin H. Proyect
33 Button Place
New York, New York 10005


Dear Mr. & Mrs. Proyect:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **590** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


John J. Sollecito
Director
Tax Appeals Bureau

cc: Petitioner's Representative

Taxing Bureau's Representative

II. Whether the Income Tax Bureau properly applied the specific deduction available to a resident individual in the computation of minimum taxable income and allowed the proper deductions and allocable expenses.

III. Whether the Income Tax Bureau computed the interest due, in the event of an underpayment, for the appropriate time period.

IV. Whether the retroactive effective date of Chapter 1 of the Laws of 1972, and the combined application of sections 601-A, 602(d), 622 and 623 results in unfair, discriminatory, and unconstitutional treatment of petitioners.

FINDINGS OF FACT

1. Petitioners, Martin H. Proyect and Nellie W. Proyect, filed a New York income tax resident return for the year 1972. Therein, the tax stated to be due New York was \$20,455.13. No minimum income tax was computed on the return.

2. On November 24, 1975, the Income Tax Bureau issued a Statement of Audit Changes to petitioners asserting additional income tax due of \$5,522.97, plus interest to that date of \$1,081.51. This additional tax due was computed based on a modification of a capital gain omitted by the petitioners on the return, the application of the minimum income tax to that portion of the

capital gain not taxed which is considered an item of tax preference, and included adjustments made for modification of allocable expenses. Accordingly, a Notice of Deficiency was issued November 24, 1975, asserting additional income tax due of \$5,522.97, plus interest to that date of \$1,081.51.

3. Petitioners, Martin H. Proyect and Nellie W. Proyect, reported long term capital gains of \$158,085.39 on their 1972 Federal income tax return. To this figure, petitioners added short term capital gains and reported one-half of that sum as income from the sale of capital assets on both their Federal and New York personal income tax returns.

CONCLUSIONS OF LAW

A. That the Income Tax Bureau properly modified petitioners' Federal adjusted gross income, to arrive at New York adjusted gross income, by adding thereto one-fifth of the amount by which net long term capital gain exceeded net short term capital loss for the year 1972. (Tax Law § 612(b)(1)).

B. That the Income Tax Bureau properly computed the minimum taxable income of petitioners pursuant to the provisions of section 622 of the Tax Law for the taxable year in question.

C. That the Income Tax Bureau properly computed the interest on the tax asserted to be due pursuant to section 684 of the Tax Law. Cooper-Smith v. Bragalini, 4 A.D. 2d 374.

D. That the State Tax Commission lacks jurisdiction to consider constitutional questions and, further, the constitutionality of the laws of the State of New York are presumed at the administrative level.

E. That the petition of Martin H. Proyect and Nellie W. Proyect is denied and the Notice of Deficiency issued November 24, 1975 is sustained.

DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER