

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES H. SHEILS and MARGARET L. SHEILS

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(s) ~~XXXXXX~~ :
1967 and 1968.

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 3rd day of October , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon James H. Sheils &
Margaret L. Sheils ~~(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. James H. Sheils
130 Forest Avenue
New Rochelle, New York 10804

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)~~
~~XXXXXX~~ 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

3rd day of October , 1977.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES H. SHEILS and MARGARET L. SHEILS

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(s) ~~xxx Periode~~ :
1967 and 1968.

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 3rd day of October , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Bertram Gezelter

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

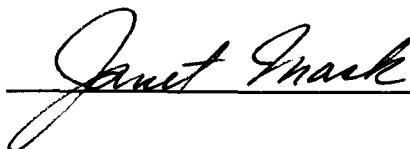
as follows: Bertram Gezelter, CPA
Biller & Snyder
75 Maiden Lane
New York, New York 10038

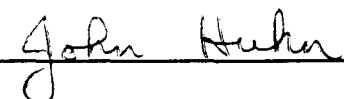
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

3rd day of October , 1977.







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

October 3, 1977

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

**Mr. & Mrs. James H. Sheils
130 Forest Avenue
New Rochelle, New York 10804**

Dear Mr. & Mrs. Sheils:

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 **(5) 690** 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

FINDINGS OF FACT

1. Petitioner James H. Sheils was a partner in the firm of Gregory and Sons, a partnership engaged in the security brokerage business in New York City. In 1969, the firm sustained a substantial business loss, and petitioner James H. Sheils reported his share of this loss on the joint 1969 Federal and New York State resident income tax returns which he filed with his wife, petitioner Margaret L. Sheils.

2. On their 1969 Federal return, petitioners reported a negative taxable income of \$582,509.00. Petitioners filed an application for refund of Federal income tax based on the carryback of net operating loss for 1969. They received a Federal refund in the amount of tax previously paid on 1967 and 1968 Federal taxable income reported for those years of \$91,411.00 and \$60,963.00, respectively. Petitioners did not receive a refund of Federal income tax for the year 1966, as they reported a negative taxable income for 1966 in the amount of \$14,211.00. The computation of the Federal net operating loss deduction is not in dispute.

3. On their 1969 New York State personal income tax return, petitioners calculated their New York taxable income to be the negative amount of \$567,926.00. They also reported negative New York taxable income on their 1966 New York State income tax return, but reported New York taxable income of \$123,757.58 and \$114,956.00 for 1967 and 1968, respectively.

4. Petitioners calculated different net operating loss carrybacks, regarding the years 1966, 1967 and 1968, for New York State purposes than for Federal purposes. They also claimed deductions for the years 1967 and 1968 and applied for refunds of New York personal income tax for the years 1967 and 1968.

5. Petitioners contended that since they were required to modify their Federal income for the year of the net operating loss by the modifications required under sections 612(b) and (c) of the Tax Law, they should be permitted to compute a New York net operating loss different in amount from the Federal net operating loss, so as to take into account the New York modifications. Petitioners proposed that in computing the amount of the New York net operating loss for the loss year, their Federal taxable income should first be modified by the modifications required by sections 612(b) and (c) of the Tax Law, before applying the modifications required under sections 172(d)(2)(3) and (5) of the Internal Revenue Code. The amount of the New York net operating loss computed in this manner would then be applied, in full, in the first carryback year against the Federal taxable income for said year, as modified in accordance with the requirements of sections 612(b) and (c) of the Tax Law. This would be done before applying the modifications required by sections 172(d)(2)(3) and (5) of the Internal Revenue Code. The portion

of the New York net operating loss not applied under this method on the New York return, in the first carryback year, would then be applied in a similar manner in the next carryback year or years.

6. In computing the partial refund of 1967 and 1968 New York personal income tax allowed to petitioner by the Income Tax Bureau, in connection with the 1969 Federal net operating loss, the deductions allowed for 1967 and 1968 were limited to the amounts of positive Federal taxable income for the respective years of \$91,411.00 and \$60,963.00. After said deductions, the petitioners had remaining New York taxable income of \$32,347.07 for 1967 and \$53,993.00 for 1968.

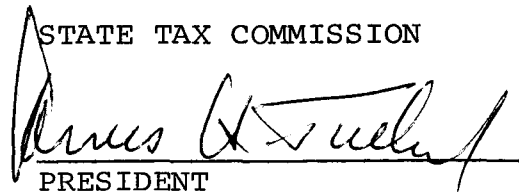
CONCLUSIONS OF LAW

A. That the amount of net operating loss and the portion thereof allowable as a deduction in each of the carryback years is determined in accordance with the provisions of the Internal Revenue Code. The portion of the net operating loss allowable as a carryback deduction is limited (under section 172(b)(2) of the Internal Revenue Code) to the amount of the modified taxable income computed thereunder, and this modified taxable income for such a year may not be less than zero. The portions of the net operating loss allowed as deductions in the carryback years were deductions used in recomputing petitioners' Federal adjusted

gross income for said years. Therefore, the amounts allowed as carryback deductions for Federal income tax purposes would also be the amounts permitted for New York State income Tax purposes within the meaning and intent of Article 22 of the Tax Law. The Tax Law makes no provisions which would allow a net operating loss deduction, or carryback or carryover deduction, which exceeded the allowance for Federal income tax purposes.

B. That the petition and the claims for refund of petitioners, James H. and Margaret L. Sheils, are denied and the Notice of Partial Refund Allowance issued November 29, 1971 is sustained.

DATED: Albany, New York
October 3, 1977

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER