

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JESSE L. GOLDSTEIN

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 ~~(x)~~ ~~1970~~ ~~(x)~~ 1971.:
~~(x)~~

State of New York
County of Albany

John Huhn, 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 17th day of February, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Jesse L. Goldstein

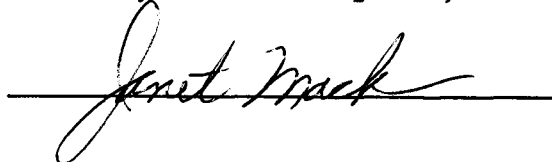
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Jesse L. Goldstein
154 Union Road
Spring Valley, New York 10977

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~~
~~xxxx~~) 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

17th day of February, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JESSE L. GOLDSTEIN

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 ~~(sixty six)~~ 1971. :
~~(sixty six)~~

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 17th day of February , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Myron L. Dickman

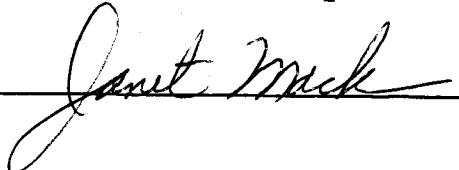
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Myron L. Dickman, CPA
24 West Street
Spring Valley, New York 10977

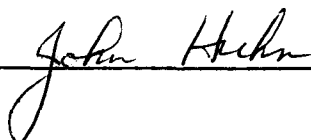
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

17th day of February , 1978







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

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

February 17, 1978

Mr. Jesse L. Goldstein
154 Union Road
Spring Valley, New York 10977

Dear Mr. Goldstein:

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 **(b) 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,

Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| JESSE L. GOLDSTEIN | : | |
| for Redetermination of a Deficiency or | : | DECISION |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Year | : | |
| 1971. | : | |

Petitioner, Jesse L. Goldstein, residing at 154 Union Road, Spring Valley, New York 10977, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 16309).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977 at 2:45 P.M. The petitioner appeared by Myron L. Dickman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether ordinary income and capital gains income, distributed during the year 1971 to petitioner, Jesse L. Goldstein, by a Small Business Corporation which was liquidated in 1970, was includable in petitioner's gross income for the year 1971.

FINDINGS OF FACT

1. Petitioner, Jesse L. Goldstein, filed a New York State resident income tax return for the year 1971. Petitioner did not include either ordinary income of \$2,069.83 or a net capital gain of \$21,378.99 (which was distributed from a Small Business Corporation) in his total, New York reported income.

2. Upon audit, the Income Tax Bureau issued a Notice of Deficiency dated February 25, 1974, asserting that total Sub-Chapter "S" income of \$23,448.82 was subject to personal income tax, and that the net capital gain of \$21,378.99 was subject to the minimum income tax as an item of tax preference.

3. Petitioner was a stockholder and corporate officer of New York Bagelry, Inc., a Missouri corporation which under section 1372(a) of the Internal Revenue Code did not elect to be subject to tax under chapter 1 of the Internal Revenue Code.

4. On April 27, 1970, the stockholders and directors of New York Bagelry, Inc. adopted a plan of liquidation, pursuant to section 337 of the Internal Revenue Code. This plan provided that the corporation be completely liquidated and dissolved, and that the entire process (including stockholder distributions) be made within a twelve-month period.

5. Petitioner's representative asserted that the corporate assets were sold to the National Bagelville Corporation on May 8, 1970. However, redemption of its liquid assets (such as United States Treasury Bills and Certificates of Deposit) were not made until sometime after August 31, 1970.

6. Distributions from the liquidation were paid to the stockholders, including petitioner, Jesse L. Goldstein, on March 16, 1971. The liquidation of the corporate assets, along with its related transactions (including the sale of the assets and the subsequent payment of liquidating distributions), were reported on its final corporate return for the fiscal year beginning September 1, 1970 and ending August 31, 1971.

7. A United States individual income tax return (Form 1040) was filed by petitioner, Jesse L. Goldstein, for the year 1971. On this return, ordinary income of \$2,069.83 and a net capital gain of \$21,378.99, which he received from New York

Bagelry, Inc., was included in adjusted gross income. On August 5, 1974, petitioner filed an amended return with the United States Treasury Department eliminating these two items of income. However, the amended return along with its refund claim were withdrawn by petitioner on May 27, 1975.

8. Petitioner's representative asserted that the petitioner was a non-resident of New York State during the year 1970 and that the capital gain of \$21,378.99 actually occurred in 1970, since the corporate assets were sold in 1970. He further asserted that the corporate return for the taxable year ending August 31, 1971 was erroneously filed, along with the petitioner's individual income tax return for the year 1971. He contended that this return should not have shown the capital gain of \$21,378.99. Accordingly, he reasoned that the capital gain was sustained by the corporation on May 8, 1970 and that it should have been distributed to the shareholders in 1970. Also, said distribution should have been reported on their 1970 tax returns in accordance with section 1375 of the Internal Revenue Code.

CONCLUSIONS OF LAW

A. That a corporation which adopts a plan of complete liquidation, said liquidation to be completed within a twelve-month period, does not recognize a gain or loss sustained from property sold or exchanged during that twelve-month period, in accordance with the meaning and intent of section 337 of the Internal Revenue Code and Article 22 of the Tax Law. Accordingly, section 1375 of the Internal Revenue Code does not apply for the year 1970.

B. That the ordinary income of \$2,069.83 and the net reportable capital gain of \$21,378.99 received in 1971, must be included in gross income for the taxable year 1971, in accordance with the meaning and intent of section 451 of the Internal Revenue Code and section 612(a) of the Tax Law.

C. That the petition of Jesse L. Goldstein is denied and the Notice of Deficiency issued February 25, 1974 in the sum of \$2,717.99 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER