

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THE ESTATE OF MARGARET M. COLLINS :  
(Elizabeth A. Collins, Executrix)  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~XX~~ 22 of the :  
Tax Law for the Year ~~(XXXXXX)~~ 1972 :

AFFIDAVIT OF MAILING

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 24th day of April, 1978, he served the within  
Notice of Decision by (certified) mail upon The Estate of Margaret M.  
Collins (Elizabeth A. Collins, Executrix)

~~(XXXXXX)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: The Estate of Margaret M. Collins  
(Elizabeth A. Collins, Executrix)  
31 Barnum Street  
Rochester, New York 14609

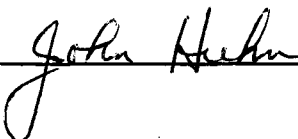
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(XXXXXX)~~  
~~(XXXXXX)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

24th day of April, 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THE ESTATE OF MARGARET M. COLLINS :  
(Elizabeth A. Collins, Executrix) :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~XX~~ 22 of the :  
Tax Law for the Year ~~XXXXXX~~ 1972:

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that

~~He~~ She is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of April , 19 78, ~~he~~ she served the within  
Notice of Decision by (certified) mail upon Thomas J. Meagher, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Thomas J. Meagher, Esq.  
36 West Main Street  
Rochester, New York 14614

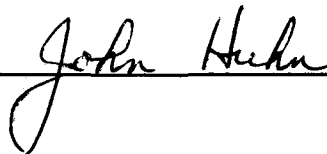
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

24th day of April , 19 78







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

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

**April 24, 1978**

**The Estate of Margaret M. Collins  
(Elizabeth A. Collins, Executrix)  
31 Barnum Street  
Rochester, New York 14609**


**Dear Ms. Collins:**

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 **20690** 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 CHYRIWATY  
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	:	
	:	
THE ESTATE OF MARGARET M. COLLINS	:	DECISION
(Elizabeth A. Collins, Executrix)	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

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Petitioner, Estate of Margaret M. Collins (Elizabeth A. Collins, Executrix), 31 Barnum Street, Rochester, New York 14609, 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 1972 (File No. 01588).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 11, 1977 at 1:15 P.M. Petitioner appeared by Thomas J. Meagher, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether amendments to the Tax Law, which require an estate to make a 20 percent modification of its long-term capital gain deduction for 1972 and which also require it to claim for said

year a specific deduction (not to exceed \$5,000.00) in computing its minimum income tax, are unconstitutional.

FINDINGS OF FACT

1. Petitioner, the Estate of Margaret M. Collins (Elizabeth A. Collins, Executrix), filed a New York State resident income tax fiduciary return for the year 1972, in which net long-term capital gains were reported and a 50 percent long-term capital gain deduction was taken. Petitioner did not make a 20 percent modification in connection with the net long-term capital gain deduction, nor did it include a minimum tax computation schedule with respect to said long-term capital gain deduction.

2. The Income Tax Bureau issued a Statement of Audit Changes in which petitioner's taxable income was increased by 20 percent of the net long-term capital gain deduction claimed on the tax return. The Bureau also contended that the balance of the net long-term capital gain deduction was an item of tax preference and computed the minimum tax thereon. Accordingly, it issued a Notice of Deficiency on December 23, 1974 in the amount of \$2,540.09 in income tax, plus \$380.18 in interest, for a total due of \$2,920.27.

3. Petitioner agreed that there was a net long-term capital gain realized in the year 1972.

4. Petitioner argued that the amendment requiring an estate or trust to make a 20 percent modification of the long-term capital gain deduction under section 612 subdivision 11 of the Tax Law became law pursuant to Chapter 718 of the Laws of 1973. It was then signed into law on June 11, 1973, thereby making it unconstitutional since application of said law was made retroactive to 1972. Petitioner claimed that this amendment amounted to a substantive rather than an administrative law change. Petitioner further argued that the specific deduction allowable to an estate or trust (which was reduced from \$20,000.00 to \$5,000.00 by amendments to sections 622(3) and (4) of the Tax Law) was also unconstitutional since these amendments were applied retroactively to 1972.

#### CONCLUSIONS OF LAW

A. That petitioner was required to add 20 percent of the long-term capital gain deduction claimed for the year 1972 to the Federal taxable income of the fiduciary in computing the fiduciary's New York taxable income, in accordance with the provisions of section 618(4) of the Tax Law as amended by Laws of 1973, Chapter 718.

B. That in computing the New York minimum taxable income subject to New York State minimum income tax for 1972, petitioner's

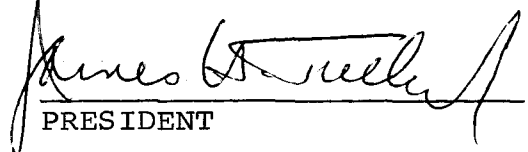
allowable specific deduction was properly determined by the Income Tax Bureau, in accordance with the provisions of section 622(c)(2) of the Tax Law as amended by Laws of 1973, Chapter 722.

C. That the constitutionality of the laws of the State of New York is presumed at the administrative level of and by the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that the sections of the Tax Law which relate to the determination of petitioner's personal income tax liability and minimum income tax liability for 1972, are constitutional.

D. That the petition of the Estate of Margaret M. Collins (Elizabeth A. Collins, Executrix) is denied and the Notice of Deficiency issued December 23, 1974 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York  
April 24, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER