

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Richard D. & Lois Rosenblatt :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1972. :

State of New York
County of Albany

Jay Vredenburg, 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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Richard D. & Lois Rosenblatt, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

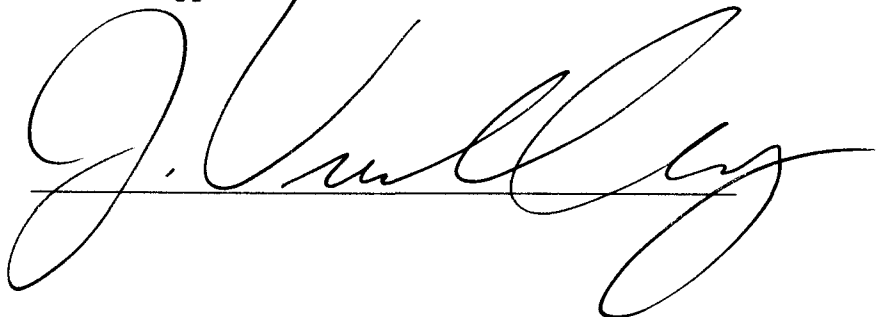
Richard D. & Lois Rosenblatt
4941 Arlington Ave.
Riverdale, NY 10471

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of March, 1980.

Joanne Krapp



STATE OF NEW YORK
STATE TAX COMMISSION

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of

Richard D. & Lois Rosenblatt

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Personal Income Tax
under Article 22 of the Tax Law
for the Year 1972.

State of New York
County of Albany

Jay Vredenburg, 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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Oscar Weinberger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Oscar Weinberger
919 Third Ave.
New York, NY 10022

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
14th day of March, 1980.

Joanne Knapp

J. Kelly

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

March 14, 1980

Richard D. & Lois Rosenblatt
4941 Arlington Ave.
Riverdale, NY 10471

Dear Mr. & Mrs. Rosenblatt:

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) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Oscar Weinberger
919 Third Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RICHARD D. ROSENBLATT and LOIS ROSENBLATT	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioners, Richard D. Rosenblatt and Lois Rosenblatt, 4941 Arlington Avenue, Riverdale, New York 10471, 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. 12341).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 30, 1977 at 9:00 A.M. Petitioners appeared by Oscar Weinberger, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly subjected to minimum income tax in 1972, a long term capital gain from a transaction in 1968 which was reported on the installment basis.

FINDINGS OF FACT

1. Petitioners, Richard D. Rosenblatt and Lois Rosenblatt, timely filed a New York State Income Tax Resident Return (Form IT-201) for 1972. No minimum tax return (IT-220) was filed.

2. On August 21, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners asserting income tax due of \$36,950.20 for 1972. On May 19, 1975, the Bureau issued a Notice of Deficiency to petitioners for

said amount, plus interest of \$5,800.81.

3. On August 12, 1975, petitioners filed a petition for redetermination of the deficiency in income tax against them. As part of the petition, petitioner Richard Rosenblatt submitted a statement that on July 22, 1968, he had sold 50 shares of a common stock, with respect to which he elected to report the resulting long-term capital gain on an installment basis for income tax purposes. He claimed that he recognized a net long-term capital gain of \$855,652.00 as a result of proceeds received from the 1968 sale.

4. From the information stated on the 1972 income tax return filed by petitioners, the Income Tax Bureau prepared a 1972 New York State Minimum Income Tax Computation Schedule (Form IT-220). The Income Tax Bureau deemed the \$855,652.00 long-term capital gain reported by petitioners, Richard D. and Lois Rosenblatt, to be Federal items of tax preference. Twenty percent of this amount (\$171,130.00) was deducted to arrive at \$684,522.00, the New York State resident basis for computing the minimum tax for 1972. The Income Tax Bureau modified allocable expenses attributable to items of tax preference, in accordance with the formula set forth in section 623 of the Tax Law then in effect. [Section 623 of the Tax Law repealed for years commencing after December 31, 1977 (L.1978 c.70)]. This reduced allocable expenses from \$79,073.00 to \$49,377.00, for an increase of \$29,696.00 in New York State taxable income.

5. No evidence was submitted by petitioners with respect to the terms of the alleged installment sale of common stock made in 1968. A photostat of petitioners' 1972 Federal income tax return (bearing the stamp of the Internal Revenue Service Center in Andover, Massachusetts) contained petitioners' statement to the IRS:

"In accordance with Section 1201(d)(1) Internal Revenue Code, the 1968 installment capital gain on the sale of 50 shares of Atwood Richards, Inc. was treated on the basis of 1968 capital gain rates, and has not been subjected to additional taxes."

CONCLUSIONS OF LAW

- A. The New York State minimum income tax was instituted by the laws of 1970, Chapter 1005 Par. 14, effective May 20, 1970 (Tax Law, section 622).
- B. That the Income Tax Bureau followed the statute then in effect in computing the minimum income tax and modifications applicable to the information furnished by the taxpayers on their joint New York State Income Tax Return for 1972.
- C. That the nature of the gain and the rate of tax to be applied is determined by the law in effect at the time the payment is received, not the law in effect at the time of the sale (Picchione v. Commissioner, 440 F.2d 170). Petitioners' reported capital gain was allowed in full by the Income Tax Bureau. The omission by petitioners of the minimum income tax return and computation of modifications and income tax due thereon, was properly corrected by the Income Tax Bureau.
- D. That the petition of Richard D. Rosenblatt and Lois Rosenblatt is denied in all respects. The Notice of Deficiency dated May 19, 1975 is sustained, together with lawful interest until the tax is fully paid.

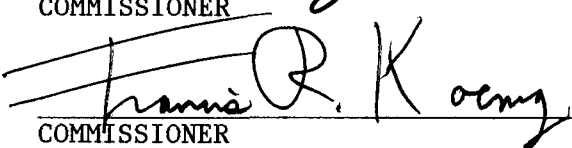
DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
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County of Albany

Jay Vredenburg, 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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Richard D. & Lois Rosenblatt, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard D. & Lois Rosenblatt
Box 1381
Rancho Santa Fe, CA

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of April, 1980.

Joanne Knapp

J. Vredenburg