

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Harry B. Henshel :
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 1970. :

AFFIDAVIT OF MAILING

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 Harry B. Henshel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

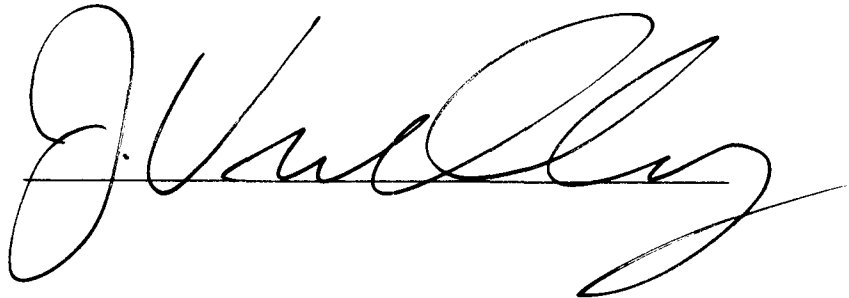
Harry B. Henshel
630 Fifth Ave.
New York, NY 10020

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

In the Matter of the Petition :
of :
Harry B. Henshel :
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 1970. :

AFFIDAVIT OF MAILING

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 Samuel Speyer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

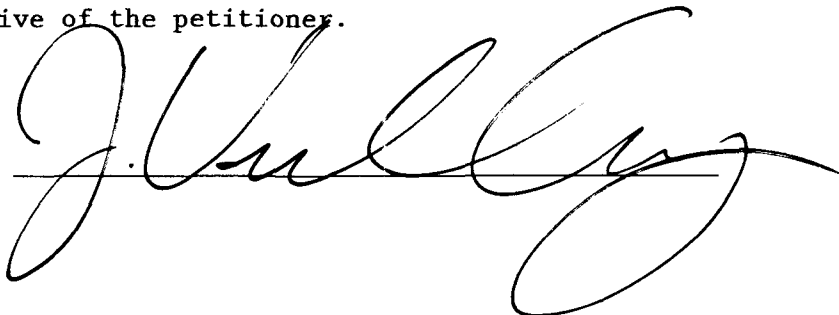
Mr. Samuel Speyer
Speyer & Bachman
22 E 40th St.
New York, NY 10016

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



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

March 14, 1980

Harry B. Henshel
630 Fifth Ave.
New York, NY 10020

Dear Mr. Henshel:

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
Samuel Speyer
Speyer & Bachman
22 E 40th St.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HARRY B. HENSHEL : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1970. :

Petitioner, Harry B. Henshel, 630 Fifth Avenue, New York, New York 10020, 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 1970 (File No. 13226).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 25, 1977 at 10:45 A.M. Petitioner was represented by Samuel Speyer, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the minimum tax return, filed by petitioner for the year at issue, is subject to modification pursuant to Section 623(b) of the New York State Tax Law, based on a deduction for interest expense claimed on petitioner's Federal income tax return.

FINDINGS OF FACT

1. For the year at issue, petitioner, Harry B. Henshel, deducted on his Federal income tax return interest expense of \$66,276.00. Of this amount, \$61,776.00, represents charges incurred for the acquisition of securities and the exercise of stock options; the balance of said interest expense, viz. \$4,500.00, represents interest expense incurred by petitioner on his home mortgage.

2. The Income Tax Bureau held that the total amount of the interest expense claimed by petitioner as a deduction on his Federal income tax return was subject to modification pursuant to Section 623(b) (1) of the Tax Law. Accordingly, the Bureau reduced petitioner's Federal deduction for interest expense pursuant to Section 615(c) (4) of the Tax Law by the application of the computation prescribed under Section 623(a) of the Tax Law.

3. Under date of March 25, 1974, a Notice of Deficiency was issued against the taxpayer by the Bureau based on said modification of taxes, contributions and interest expense as applied to the minimum income tax. As a result of said modification, the Bureau imposed an additional income tax of \$3,608.00 plus accrued interest for \$637.32.

4. For the year at issue, petitioner was president of Bulova Watch Company, Inc. In said year, petitioner exercised his stock options. In addition, petitioner also acquired other marketable securities. To finance said acquisitions, petitioner incurred substantial debts on which the interest in question was incurred.

5. Petitioner contends that the interest expense incurred in the above transactions was ordinary and necessary for the production of income, and as said expenditures are ordinary and necessary for the production of income, they are not subject to modification pursuant to Section 615(c) (4) of the Tax Law.

CONCLUSIONS OF LAW

A. That Section 623(b) of the Tax Law provides in part that the allocable expenses of a resident individual shall include that portion of the New York itemized deductions of an individual of interest deducted solely by reason

of Section 163 of the Internal Revenue Code as modified by Subsection 615(d). That interest deducted pursuant to Section 163 of the code is intended to distinguish interest relating to business or rental income deductible in computing adjusted gross income.

B. That the computations by the Income Tax Bureau of allocable expenses, interest, taxes and charitable contributions pursuant to Section 623 of the Tax Law relating to deductions for allocable expenses attributable to items of tax preference was correct.

C. That the petition of Harry B. Henshel is denied and the Notice of Deficiency issued March 25, 1979 is sustained.

DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

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AFFIDAVIT OF MAILING

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Harry B. Henshel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry B. Henshel
24 Murray Hill Rd.
Scarsdale, NY 10583

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
11th day of April, 1980.

Joanne Knapp

J. Vredenburg