

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JACK N. SOBEL & HANNAH SOBEL

:

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1972 and 1973.

Petitioners, Jack N. Sobel and Hannah Sobel, 197 Trenor Drive, New Rochelle, New York 10804, filed a petition for redetermination of a deficiency or for refund of personal income tax due under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 39220).

A formal hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 7, 1985 at 9:15 A.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners previously paid the deficiency asserted by the Audit Division for the years 1972 and 1973.

FINDINGS OF FACT

1. Petitioners, Jack N. Sobel and Hannah Sobel, filed joint New York State income tax resident returns for the years 1972 and 1973 on August 31, 1973 and October 2, 1974, respectively. Both returns were filed beyond the prescribed due date or extended due date.

2. The Internal Revenue Service audited petitioners' 1972 and 1973 Federal income tax returns and, as a result of said audit, increased reported

3. On October 1, 1976, on the basis of information received from the Internal Revenue Service concerning the above mentioned Federal audit changes, the Audit Division issued a Notice of Additional Tax Due/Notice and Demand to petitioners, increasing reported New York taxable income for 1972 and 1973 by \$16,130.00 and \$11,510.00, respectively. Additional New York State tax due totalled \$1,452.46 for 1972 and \$945.22 for 1973.

4. On October 23, 1979, a warrant was issued against petitioners for the income tax assessed in the aforementioned Notice of Additional Tax Due/Notice and Demand. The warrant asserted, inter alia, tax and interest due in the following amounts:

	<u>1972</u>	<u>1973</u>	<u>Totals</u>
Tax	\$1,452.46	\$ 945.22	\$2,397.68
Interest	<u>682.90</u>	<u>373.62</u>	<u>1,056.52</u>
Totals	\$2,135.36	\$1,318.84	\$3,454.20

5. Sometime prior to April 14, 1980, the Audit Division received information from the Internal Revenue Service which indicated that the original Federal audit changes had been revised downward. Revised Federal audit changes totalled \$8,164.50 for 1972 and \$7,090.99 for 1973. Based on the aforementioned revised Federal audit changes, the Audit Division, on April 14, 1980, issued a Statement of Audit Changes to petitioners for 1972 and 1973. Said Statement advised petitioners that:

"This notice supersedes our notice of additional tax due dated October 1, 1976 which has been withdrawn and cancelled." (emphasis added).

6. The Statement of Audit Changes proposed, inter alia, to increase New York taxable income for 1972 and 1973 in amounts equal to the revised Federal audit changes (i.e., \$8,164.50 for 1972 and \$7,090.99 for 1973). Said Statement also asserted that a penalty was due pursuant to Section 6651(a)(1) of the Internal Revenue Code.

Law for failure to timely file returns for 1972 and 1973. Based on the Statement of Audit Changes, the Audit Division, on May 13, 1982, issued a Notice of Deficiency to petitioners for 1972 and 1973 proposing additional tax due of \$1,098.41, plus penalty of \$191.24 and interest of \$757.63, for a total allegedly due of \$2,047.28.

7. Petitioner asserts that the tax and interest shown due on the warrant dated October 23, 1979 was paid in full and that the Notice of Deficiency dated May 13, 1982 does not **allow** credit for said payment. On April 21, 1980, the warrant was marked "wholly satisfied" and stamped "Paid in Full". Said warrant also indicated that:

"Satisfaction of a warrant in favor of State Tax Commission against Jack Sobel and Hannah Sobel, his wife, for the sum of \$-0-," (emphasis added).

8. Other than the warrant, petitioners did not submit any further documentary evidence or testimony to support that a payment was made. Petitioners presented no evidence or argument with respect to the penalty asserted due for failure to file returns on time.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law places the burden of proof on petitioners except in three specifically enumerated instances, none of which is at issue herein. Petitioners have failed to sustain their burden of proof to show that the tax and interest asserted in the warrant dated October 23, 1979 was paid. Although the warrant was marked as "Paid in Full", this fact, by itself, is insufficient to sustain the burden of proof. In reaching this conclusion, it must be noted that:

(1) the warrant was satisfied "for the sum **of** \$-0-";

(ii) the Statement of Audit Changes dated April 14, 1980 specifically stated that the notice of additional tax due dated October 1, 1976 (the document on which the warrant was based) was withdrawn and cancelled;

(iii) the warrant was marked as "wholly satisfied" and "Paid in **Full**" on April 21, 1980, seven days after the issuance of the Statement of Audit Changes; and


(iv) petitioners did not offer any cancelled checks or other acceptable evidence to support that a payment was made.


B. That the petition of Jack N. Sobel and Hannah Sobel **is** denied and the Notice of Deficiency issued May 13, 1982 is sustained, together with such additional penalty and interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER