

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

BASIL FULLERTON AND JANET FULLERTON

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York
for the Year 1977.

Petitioners, Basil Fullerton and Janet Fullerton, 145 Kings Highway,
Warwick, New York 10990, filed a petition for redetermination of a deficiency
or for refund of personal income tax under Article 22 of the Tax Law and
Chapter 46, Title T of the Administrative Code of the City of New York for the
year 1977 (File No. 40772).

A hearing was held before Doris E. Steinhardt, Hearing Officer, at the
offices of the State Tax Commission, Two World Trade Center, New York, New
York, on November 19, 1985 at 9:15 A.M., with additional evidence to be submitted
by January 7, 1986. Petitioners appeared pro se. The Audit Division appeared
by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed the child care credit
claimed by petitioners on their 1977 New York State income tax return.

II. Whether the Audit Division properly disallowed the resident credit
claimed by petitioners on their 1977 income tax return.

111. Whether petitioners should have been allowed credit for New York State
taxes withheld from the salary of petitioner Janet Fullerton.

FINDINGS OF FACT

1. Petitioners, Basil and Janet Fullerton, failed to timely file a 1977 New York State Income Tax Resident Return. Based on information obtained from the Internal Revenue Service under authorization of section 6103(d) of the Internal Revenue Code, the Audit Division issued a Statement **of** Audit Changes to petitioners on September 30, 1980 asserting New York State and New York City personal income tax due of \$1,221.74 for the year 1977. On or about October 16, 1981, Basil Fullerton filed a New York State Income Tax Resident Return for 1977 reporting total state and city tax due of \$712.74, less taxes withheld **of** \$500.16, for a balance due of \$212.58. On said return, Mr. Fullerton claimed a child care credit **of** \$104.00 and a resident credit of \$405.10 for taxes allegedly paid to New Jersey.

2. On October 15, 1982, the Audit Division issued a Notice of Deficiency against petitioner Basil Fullerton in the amount **of** \$1,221.74, plus penalty of \$580.30 and interest of \$538.68, for a total due of \$2,340.72 for the year 1977. The child care credit and resident credit claimed by Mr. Fullerton on his late filed return were disallowed and no credit was given for taxes withheld from Janet Fullerton's wages. The credit for taxes withheld and the child care credit were disallowed because Janet Fullerton did not file a return for 1977. The resident credit was disallowed because Basil Fullerton failed to prove that he filed a New Jersey tax return and to substantiate the amount **of** tax allegedly due the State of New Jersey.

3. Petitioners had been residing in the Bronx, New York during 1977. They encountered marital problems and, in September, 1977, petitioners separated. Janet Fullerton remained in New York and Basil Fullerton maintained several

filed a joint federal income tax return for 1977. At the hearing, petitioners filed an amended 1977 New York State resident return electing a filing status of married filing separately on one return. Petitioners claimed the same credits as were claimed by Basil Fullerton on his original return as discussed in Finding of Fact "1". The Audit Division had previously verified the amounts withheld from the wages of Janet Fullerton.

4. Basil Fullerton failed to submit a copy of the 1977 New Jersey return he claims to have filed. He was allowed time following the hearing to submit the return, but such return has not been received by the State Tax Commission.

CONCLUSIONS OF LAW

A. That inasmuch as petitioners filed a joint federal income tax return for 1977, they were entitled to file separate New York State personal income tax returns on a single form. Tax Law §651(b)(2). The Audit Division did not allow credit for withholding from Janet Fullerton's wages and disallowed the child care credit solely because Janet Fullerton did not file a return for 1977. Since petitioners filed an amended return for 1977 changing their filing status to married filing separately on one return, their tax liability for 1977 is to be recomputed under such status allowing a child care credit in the amount of \$104.00 and allowing credit for taxes withheld in the amount of \$500.16.

B. That a resident may claim a credit against the personal income tax paid to another state, **its** political subdivisions or to the District of Columbia with respect to income derived therefrom and subject to tax under Article 22 of the Tax Law. Tax Law §620(a). In order to claim the credit, the resident individual must attach to his New York return a copy of the income tax return filed with the other state. 20 NYCRR 121.1(d)(1).

Basil Fullerton was unable to substantiate the amount, if any, of income tax payable to New Jersey for 1977, as evidenced by a return filed with that state, the Audit Division properly disallowed the resident credit.

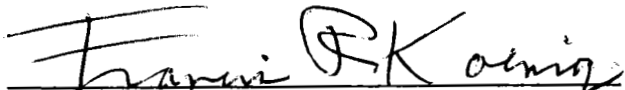
C. That the petition of Basil Fullerton and Janet Fullerton is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is directed to modify the Notice of Deficiency issued October 15, 1982 accordingly; and that, except **as so** granted, the petition **is** in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

