

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD J. GREELEY AND JOAN GREELEY

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1980.

Petitioners, Donald J. Greeley and Joan Greeley, 1161 N.W. 98th Terrace, Pembroke Pines, Florida 33024, 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 1980 (File No. 49472).

On December 3, 1985, petitioners waived their right to a hearing and requested that a decision be rendered by the State Tax Commission based upon the Department of Taxation and Finance file. Upon review of the record, the State Tax Commission renders the following decision.

ISSUES

I. Whether unemployment compensation received by petitioner Joan Greeley is subject to New York State personal income tax.

11. Whether the Notice of Deficiency issued to petitioners by the Audit Division was barred by a statute of limitations.

FINDINGS OF FACT

1. Donald J. Greeley and Joan Greeley (hereinafter "petitioners") timely filed a New York State Income Tax Resident Return for the year 1980 under the filing status "married filing separately on one return." On October 29, 1983, as a result of information obtained from the Federal/State Tape Match program

by petitioner Joan Greeley on their 1980 Federal income tax return but not on their 1980 New York State return, the Audit Division issued a Statement of Audit Changes to petitioner Joan Greeley which contained the following explanation:

"The starting point for computing the New York tax liability is Federal adjusted gross income. Therefore, your tax liability has been recomputed as shown.

You must compute the taxable amount of unemployment compensation as if you had each filed separate Federal returns. Therefore, for our purposes, as you have a base of zero, the amount of compensation received is likewise taxable to New York State.

Interest for late payment or underpayment at the applicable rate.

Federal adjusted gross income reported	\$31,957.00
Total New York income reported	<u>28,907.00</u>
Adjustment	\$ 3,050.00
Total New York income reported	\$ 2,275.83
Adjustment	<u>3,050.00</u>
Total New York income corrected	\$ 5,325.83
Exemption	<u>750.00</u>
New York taxable income corrected	\$ 4,575.83

Tax on income	\$143.03
Tax due - previously stated	<u>35.75</u>

PERSONAL INCOME TAX BALANCE DUE	\$107.28
	Interest <u>32.65</u>
	TOTAL DUE <u>\$139.93"</u>

Accordingly, on January 5, 1984, the Audit Division issued to petitioners, Donald J. Greeley and Joan Greeley, a Notice of Deficiency asserting additional tax due of \$107.28, plus interest of \$35.04, for a total amount due of \$142.32.

2. Pursuant to the provisions of section 85 of the Internal Revenue Code, the Audit Division, at a pre-hearing conference held pursuant to 20 NYCRR 601.4, reduced the amount of unemployment compensation received by petitioner Joan Greeley held subject to New York State personal income tax from \$3,050.00 to \$2,663.00 and, accordingly, reduced the amount of tax due from \$107.28 to \$92.00 plus applicable interest.

3. Petitioners, Donald J. Greeley and Joan Greeley, offered no evidence in support of their petition.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

The modifications to Federal adjusted gross income **as** provided for in section 612 of the Tax Law are not applicable in the instant proceeding.

B. That section 85 of the Internal Revenue Code, in effect for the years at Issue, was included within Part II (Items Specifically Included in Gross Income) of Chapter 1B, Subtitle A of the Internal Revenue Code and provided as follows:

"§85. Unemployment compensation

(a) In general. -- If the sum for the taxable year of the adjusted gross income of the taxpayer (determined without regard to this section and without regard to section 105(d) and the unemployment compensation exceeds the base amount, gross income for the taxable year includes unemployment compensation in an amount equal to the lesser of --

(1) one-half of the amount of the excess of such sum over the base amount, or

(2) the amount of the unemployment compensation.

(b) Base amount defined. -- For purposes of this section, the term 'base amount' means --

(1) **except as provided in paragraphs (2) and (3), \$20,000,**

(2) \$25,000, in the case of a joint return under section 6013, or

(3) zero, in the case of a taxpayer who --

(A) is married at the close of the taxable year (within the meaning of section 142) but does not file a joint return

(B) does not live apart from his spouse at all times during the taxable year.

(c) Unemployment compensation defined. -- For purposes of this section, the term 'unemployment compensation' means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation."

C. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that the adjustment made herein for unemployment compensation received by petitioner Joan Greeley was erroneous or improper. Accordingly, said adjustment is hereby sustained.

D. That section 683(a) of the Tax Law provides as follows:

"Except as otherwise provided in this section, any tax under this article shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed)."

E. That section 683(b)(1) of the Tax Law provides as follows:

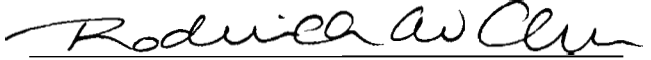
"For purposes of this section a return of income tax, except withholding tax, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day."

Petitioners' 1980 New York State personal income tax return is, therefore, deemed to have been filed on April 15, 1981. Pursuant to the provisions of section 683(a) of the Tax Law, supra, the Audit Division has three years from the date on which the return was filed or, in the instant proceeding, until April 15, 1984 to assess tax. Since the Notice of Deficiency was issued to petitioners on January 5, 1984, it was, therefore, timely and assessment of tax thereunder is not barred by a statute of limitations.

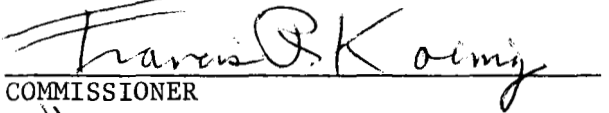
F. That the petition of Donald J. Greeley and Joan Greeley is denied and the Notice of Deficiency issued on January 5, 1984 is sustained.

DATED: Albany, New York


STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER