

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DEUTSCHE **BANK** CAPITAL CORPORATION

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 Period January 1, 1983 through January 7,
1983.

Petitioner, Deutsche Bank Capital Corporation (formerly Atlantic Capital Corp.), 40 Wall Street, New York, New York 10005, 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 period January 1, 1983 through January 7, 1983 (File No. 56300).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, **on** December 4, 1985 at 10:00 A.M., with all briefs to be submitted by February 18, 1986. Petitioner appeared by Jane Harris, its personnel manager. The Audit Division appeared by John P. Dugan, **Esq.** (Irwin A. Levy, **Esq.** , of counsel).

ISSUE

Whether petitioner is liable for the payment of interest assessed on the basis of alleged late payment of New York State and New York City income tax withheld.

FINDINGS OF FACT

1. On March 21, 1983, Atlantic Capital Corporation (now known as Deutsche Bank Capital Corporation) wrote to the Processing Unit of the New York State Department of Taxation and Finance (hereinafter "Department") indicating that:

"Enclosed please find two checks totalling \$73,370.38, which were originally sent to your N.Y. City Processing Unit on January 10, 1983, to cover tax period 1/1/83 - 1/7/83. Please note that of the total amount, \$61,581.23 covers N.Y. State Tax withheld, and \$11,789.15 should cover the city tax withheld.

Since the original checks remain outstanding on our books, and have not been received by our bank, we have stopped payment on them and are issuing new ones. I am enclosing herewith a copy of the original checks and quarter-monthly statement as confirmation of our original submission.

Inasmuch as the original checks were sent in a pre-labelled envelope with our return address (pre-printed), we are wondering if these checks were not lost or misplaced in one of your offices...".

2. Petitioner's quarter-monthly employer's return of tax withheld for the period January 1, 1983 through January 7, 1983 was required to be filed and paid on or before January 12, 1983. The Department has no record of having received the quarter-monthly return and the two checks which were mailed by petitioner on January 10, 1983, nor were said return and checks ever returned by the United States Postal Service to petitioner. The Department did receive the two checks and the copy of the quarter-monthly return which were enclosed with petitioner's letter dated March 21, 1983.

3. On April 13, 1983, the Department issued a Notice and Demand for Payment of New York State and/or New York City Withholding Tax Due ("notice") to petitioner. Said notice, which encompassed the period January 1, 1983 through January 7, 1983, assessed an amount due of \$13,117.90. Said amount due was computed in the following manner:

Tax withheld	\$73,370.38
Penalty	11,005.56
Interest	<u>2,112.34</u>
Total	<u>\$86,488.28</u>
Amount paid	73,370.38
Amount due	<u><u>\$13,117.90</u></u>

4. The penalty asserted due in the notice dated April 13, 1983 was waived by the State Tax Commission and the only item left in dispute is the interest charge of \$2,112.34. Said interest charge was paid pursuant to petitioner's check dated September 6, 1983. In this proceeding petitioner seeks a refund of the \$2,112.34 on the grounds that it timely prepared and mailed the quarter-monthly return in question with full remittance and that the return and payment were lost either by the United States Post Office or by the Department.

5. On January 10, 1983, petitioner's personnel manager, Jane Harris, prepared the quarter-monthly return in question and enclosed said return, together with two checks in full payment of the tax due, in an envelope properly addressed to "Processing Unit, P.O. Box 2110, New York, New York 10008." The envelope also contained petitioner's return address. Ms. Harris, on January 10, 1983, personally delivered the envelope to petitioner's mail room where the proper postage was affixed to said envelope. The envelope was thereafter left in the mail room to be taken by one of the mail room attendants to the Post Office. It was petitioner's procedure and practice to have its mail taken to the Post Office twice a day. The envelope containing the quarter-monthly return and remittance was sent via ordinary first class mail.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore

references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T.

B. That pursuant to section 674(a)(4) of the Tax Law, petitioner was "...required to file a return and pay the tax quarter-monthly, within three banking days...". In the instant matter, petitioner's return for the period ending on January 7, 1983 was required to be filed and the tax paid on or before January 12, 1983.

C. That Tax Law section 691(a) provides, in pertinent part:

"Timely mailing. -- If any return, ... or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article **is**, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document **is** required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date **of** delivery. ... If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section." (Emphasis supplied.)

In order to be considered timely, a withholding tax return required by section 674 must be actually delivered to the Department on or before the date prescribed for filing, or it must be delivered to the Department in an envelope bearing a United States postmark on or before such date. Where the return is sent via registered mail, the registration constitutes prima facie evidence of delivery. These rules apply with equal force to payments of personal income tax; the references in section 691(a) to "payment" were added by the Laws of 1971, Chapter 157.

D. That petitioner did not meet its burden of proof to establish timely payment of the withholding taxes involved herein. Petitioner admittedly did not utilize registered or certified mail to remit its payment. Proof of mailing by regular mail does not satisfy the requirement of proving delivery of the payment to the Department. (See Matter of The Mutual Life Insurance Company of New York, State Tax Comm., July 3, 1986, Matter of Joseph and Grace Garofalo, State Tax Comm., September 28, 1983 and Matter of Anthony and Mary Mancuso, State Tax Comm., September 28, 1983.)

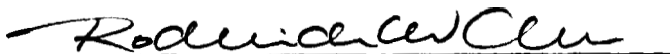
E. That section 684 of the Tax Law, in pertinent part, provides for the assessment of interest if "any amount of income tax is not paid on or before the last date prescribed in this article (Article 22) for payment...". Since petitioner's payment was not delivered on or before the due date (January 12, 1983), the Audit Division has properly assessed interest of \$2,112.34.


F. That the petition for refund of Deutsche Bank Capital Corporation is denied in its entirety.

DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT


COMMISSIONER


COMMISSIONER