

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN F. MULLEN

DECISION

for Redetermination of a Deficiency or for Refund of New York State and New York City 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 1981.

Petitioner, John F. Mullen, 136 Noble Street, Brooklyn, New York 11222, filed a petition for redetermination of a deficiency or for refund of New York State and New York City 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 1981 (File No. 62370).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March **11**, 1987 at 10:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, **Esq.**, of counsel).

ISSUE

Whether the Audit Division improperly determined an additional deficiency against petitioner based on information received from the Internal Revenue Service, after having previously issued to petitioner a Notice and Demand for Tax Due for a deficiency determined on an altogether different basis.

FINDINGS OF FACT

1. On April 5, 1985, the Audit Division issued to petitioner, John F. Mullen, a Notice of Deficiency for the year 1981, asserting additional New York State and City income tax due **of** \$640.50 plus interest. No penalty was imposed.

2. A Statement of Audit Changes issued to Mr. Mullen on July 25, 1984 explained that information obtained by the Audit Division from the Internal Revenue Service had resulted in a \$3,500.00 increase in Mr. Mullen's taxable income and a recomputation **of** his tax liability for 1981:

(a) **An** adjustment was made to Mr. Mullen's New York itemized deduction because he had subtracted only a portion of the State and local taxes included in Federal itemized deductions rather than the full amount **as** required.

(b) A capital **loss of \$3,000.00** was disallowed.

3. Mr. Mullen conceded that the adjustments were proper, and he paid all tax and interest due following a Tax Appeals conference. He did so, however, under protest.

4. On September 30, 1982, the Audit Division issued to Mr. Mullen a Notice and Demand for Tax Due for 1981, showing a balance due **of \$448.14**. This balance due resulted from a mathematical recalculation **of** Mr. Mullen's return. He paid this assessment on October 13, 1982. Mr. Mullen now takes the position that having assessed him once for taxes due in 1981, the Audit Division was barred **from** assessing additional taxes for the same tax year. He also claims that the Notice of Deficiency was barred by the statute **of** limitations.

CONCLUSIONS OF LAW

A. That Tax Law § 681(d) provides that if a mathematical error appears

on the return the Tax Commission shall notify the taxpayer that a

is due in excess of that amount shown upon the return. Such notice is not considered a Notice of Deficiency. Furthermore, the amount of tax which a return would have shown to be due but for a mathematical error is deemed to be assessed on the date of filing of the return (Tax Law § 682[a]). The Notice and Demand for Tax Due issued to petitioner on September 30, 1982 was properly issued under these provisions of the statute.


B. That petitioner has conceded that his 1981 taxable income was incorrect] reported; however, he challenges the authority of the Tax Commission to issue such a notice after previously assessing taxes for the same year. As explained above, the notice issued on September 30, 1982 was not a Notice of Deficiency. It was issued as the result of a mathematical error apparent on the face of petitioner's return. The Notice of Deficiency resulted from the Audit Division's review of information provided by the Internal Revenue Service. It was based on the Audit Division's determination that a deficiency existed because petitioner had incorrectly calculated his taxable income for 1981. The Notice of Deficiency was issued properly within the three year period of limitation set forth at Tax Law § 683(a). There is no statutory authority preventing the Tax Commission from issuing more than one determination of tax liability for the same year. In the absence of such authority, the State cannot be prevented from collecting taxes lawfully imposed (see Matter of McMahan v. State Tax Commission, 45 AD2d 624 1v denied 36 NY2d 646).

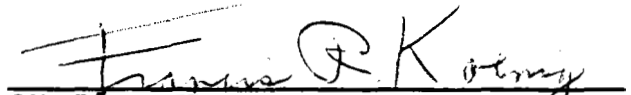
C. That the petition of John F. Mullen is denied, and the Notice of Deficiency issued on April 5, 1985 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 01 1987


PRESIDENT


COMMISSIONER


COMMISSIONER