

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MARTHA BRUNTROP

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DECISION

for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax under Chapter 46, Title T of the Administrative Code of the City of New York for the Year 1982.

Petitioner, Martha Bruntrop, 778 Seneca Avenue, Ridgewood, New York 11385, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1982 (File No. 67862).

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 1, 1986 at 1:15 P.M. Petitioner appeared by her spouse, Richard Bruntrop. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner timely filed a petition for redetermination of a deficiency.

II. Whether the Audit Division properly disallowed petitioner's New York itemized deductions.

FINDINGS OF FACT

1. Petitioner, Martha Bruntrop, together with her husband, Richard Bruntrop, timely filed a 1982 New York State and City Resident Income Tax Return wherein they elected a filing status of "married filing separately on one return". The address listed on said return was 787 Cypress Avenue, Ridgewood^d, New York.

2. In the computation of New York taxable income for 1982, petitioner claimed credit of \$4,100.00 for New York itemized deductions. Petitioner and her husband filed a joint Federal income tax return for 1982 and on said Federal return claimed credit for the zero bracket amount and did not claim itemized deductions.

3. On August 1, 1985, the Audit Division issued a Statement of Audit Changes to petitioner for 1982 which contained, inter alia, the following explanation:

"Since you were allowed the zero bracket amount on your Federal return, you may not claim itemized deductions on your New York return. Therefore, the standard deduction has been allowed."

The Audit Division increased petitioner's New York taxable income for 1982 by \$1,600.00, the difference between claimed New York itemized deductions of \$4,100.00 and the maximum New York standard deduction of \$2,500.00.

4. On October 29, 1985, the Audit Division issued a Notice of Deficiency against petitioner for 1982 asserting additional New York State and City tax due of \$172.74, plus interest of \$48.07, for a total allegedly due of \$220.81. Said notice was mailed to petitioner at the address shown on her return, 787 Cypress Avenue, Ridgewood, New York. There is no evidence in the record to indicate that the notice was ever returned to the Audit Division as undeliverable.

5. In June of 1985, prior to the Audit Division's issuance of both the Statement of Audit Changes and Notice of Deficiency, petitioner and her husband were forced to move from their apartment at 787 Cypress Avenue, Ridgewood, New York. In November of 1985, Mr. and Mrs. Bruntrop moved into a new apartment at 778 Seneca Avenue, Ridgewood, New York. During the interim period between apartments, petitioner and her husband resided with relatives.

6. Petitioner asserts that she did not receive the Notice of Deficiency dated October 29, 1985, and that the first notification she received advising her that taxes were due for 1982 were two notices and demands for payment of income tax due dated March 7, 1986. On March 20, 1986, petitioner protested the assessment of additional tax due for 1982. Petitioner asserts that her protest letter dated March 20, 1986 should be considered a timely petition since it was postmarked well within 90 days of her first receipt of a document notifying her that taxes were due for 1982 (i.e. the two notices and demands dated March 7, 1986). The Audit Division maintains that the Notice of Deficiency dated October 29, 1985 was properly issued to petitioner at her last known address; that the time period for the filing of a timely petition for redetermination expired 90 days after issuance of the Notice of Deficiency (i.e. January 27, 1986); and that petitioner's protest letter dated March 20, 1986 was not timely.

7. Petitioner did not notify the Tax Commission of her change of address from 787 Cypress Avenue, Ridgewood, New York to 778 Seneca Avenue, Ridgewood, New York.

8. At the hearing held herein, petitioner conceded that she could not claim New York itemized deductions since she did not claim itemized deductions for Federal income tax purposes. An amended return for 1982 was submitted in

evidence wherein the \$2,500.00 maximum standard deduction was divided between petitioner (\$2,325.00) and her husband (\$175.00). Additional tax of \$57.30¹ was shown to be due on said amended return.

CONCLUSIONS OF LAW

A. That Tax Law § 681(a) provides that:

"A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his last known address in or out of this state."

B. That Tax Law § 691(b) defines a taxpayer's last known address as:

"the address given in the last return filed by him, unless subsequently to the filing of such return the taxpayer shall have notified the tax commission of a change of address."

C. That, in the instant matter, petitioner failed to provide notification of a change of address and, therefore, the Notice of Deficiency issued to her at her 787 Cypress Avenue address was properly mailed to her last known address.

D. That Tax Law § 689(b) provides that "within ninety days...after the mailing of the notice of deficiency...the taxpayer may file a petition with the tax commission for a redetermination of the deficiency". Thus, petitioner's protest/petition would be timely only if filed on or before January 27, 1986. Since petitioner's protest/petition was filed on March 20, 1986, it is clearly not timely filed.

E. That in view of the fact that the protest/petition was untimely, Issue II is rendered moot.


1 On their amended return, petitioner and her husband failed to take into consideration the \$122.00 which was refunded to them upon the filing of their original return. Corrected tax due per the amended return is \$177.30 (\$57.30 + \$122.00), or \$4.56 more than the ~~tax~~ shown due on the Notice of Deficiency.

F. That the petition of Martha Bruntrop is in all respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1987


PRESIDENT


COMMISSIONER ₄


COMMISSIONER