

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

HERBERT F. TOMPKINS

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1980.  
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Petitioner, Herbert F. Tompkins, 6032 Indrio Road, P-5, Ft. Pierce,  
Florida 33451, 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. 68085).

On February 9, 1987, petitioner advised the State Tax Commission that he  
desired to waive a hearing and to submit the case to the State Tax Commission  
based upon the entire record contained in the file, with the submission of  
briefs by February 13, 1987. Afterdue consideration of said record, the State  
Tax Commission hereby renders the following decision.

#### ISSUE

Whether the Audit Division properly denied petitioner's claim for a refund  
of an overpayment of New York State personal income tax for the year 1980.

#### FINDINGS OF FACT

1. Herbert F. Tompkins (hereinafter "petitioner") timely filed New York  
State resident income tax returns for the years 1980, 1981, 1982 and 1983 and  
paid the amount of tax stated to be due on the returns filed. On each of these  
returns, petitioner included, in his New York adjusted gross income, amounts  
which represented the proceeds of a pension from New York State.

2. Petitioner subsequently became aware that he had erroneously included, in his New **York** adjusted gross income, the proceeds **of** his State pension and, on February **9, 1985**, filed amended returns for each of said years claiming an overpayment as a result of including the pension proceeds as New York taxable income.

3. For the years **1981, 1982** and **1983**, the Department of Taxation and Finance, upon receipt **of** petitioner's amended returns, issued refunds for the overpayment of personal income tax.

4. On March **31, 1986**, the Audit Division - Central Income Tax Section issued to petitioner a Notice of Disallowance of petitioner's claim for a refund **of** an Overpayment of personal income tax in the amount of **\$44.41** for the year **1980**, on the basis that the claim for refund was not timely filed.

5. Petitioner contends that his original return filed for **1980** clearly indicated that pension income was included and that the Department of Taxation and Finance should have ascertained the source **of** the pension income from petitioner, and should have immediately refunded the overpayment after it had ascertained that **it** represented the proceeds of a New York State employee's pension.

#### CONCLUSIONS OF LAW

A. That section 612(c)(3) of the **Tax** law provides that there shall be subtracted from Federal adjusted gross income "[p]ension**sof** officers and employees of this state, its subdivisions and agencies, to the extent includible in gross income for federal income tax purposes".

B. That section 687(a) of the Tax Law provides that a claim for credit or refund of an overpayment of income tax shall be filed within three years from

the time the return was filed or two years from the time the tax was paid, whichever period expires later.

C. That section 697(d) of the Tax Law provides as follows:

"Special refund authority.---Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller."

D. That, petitioner erroneously included the proceeds of his State

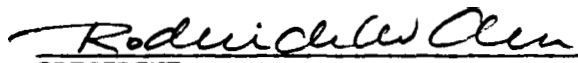
pension in his New York adjusted gross income for the year 1980. Since such proceeds were included in petitioner's New York adjusted gross income under a mistake of fact and there is no question of fact or law, petitioner's claim for refund of the resulting overpayment will be granted, notwithstanding the period of limitation for claim for refund set forth in section 697(a) of the Tax Law (see Matter of the Petition of Issac and Lilyan Zimmet, State Tax Commission, October 14, 1968).

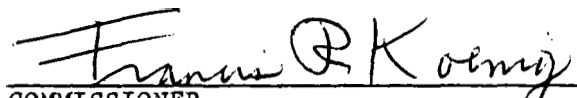
E. That the petition of Herbert F. Tompkins is granted and the sum of \$44.41 is to be refunded, together with such interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 26 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER