

## DEPARTMENT OF TAXATION AND FINANCE

## MEMORANDUM

TO : Mr. Edward Rook

FROM : Mr. Edward D. Igoe

SUBJECT: Paul & Lottie Banks  
Tax Commission Decision dated May 25, 1970

OFFICE: Income Tax

DATE : June 25, 1970

*Paul & Lottie Banks*  
1970  
*Mr. E. Igoe*

The issue in the above case was the timeliness of the filing of a refund claim, involving a 1963 carryback loss to the year 1960, allegedly mailed before the expiration of the Statute of Limitations but not received by the Income Tax Bureau. The decision was in favor of the petitioners.

The testimony of Mr. Banks was to the effect that he prepared the refund claim and gave it to his secretary for mailing. He furnished an affidavit of the secretary stating that she mailed the claim on or about March 8, 1967.

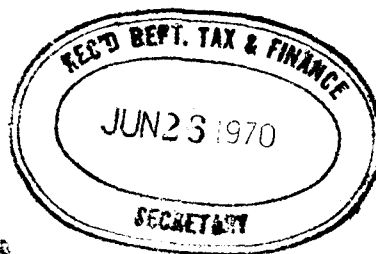
The hearing officer found that the sworn testimony of Mr. Banks, subject to an opportunity for the representative of the Income Tax Bureau to cross-examine, was sufficient to overcome the petitioners' burden of proof.

The secretary who allegedly mailed the refund claim did not appear at the hearing to testify under oath and was therefore not subject to cross-examination by the representative of the Income Tax Bureau. Accordingly, I believe the petitioners did not properly establish timely filing in this case and the Income Tax Bureau will not follow the decision as a precedent.

The decision is also faulty in other respects as follows:

- (1) The refund in question was for the year 1960 whereas the decision refers to the year 1963.
- (2) The decision directs the Income Tax Bureau to compute and process a refund because the Treasury Department allowed a tentative carryback adjustment. The allowance of a tentative carryback adjustment under Section 6411 of the Internal Revenue Code does not of itself mandate similar action by the Income Tax Bureau.

cc: Mr. Edward Best



STATE OF NEW YORK  
STATE TAX COMMISSION

*Income Tax*  
*Banks*

In the Matter of the Petition

of

PAUL & LOTTIE BANKS

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(§) 22 of the  
Tax Law for the (Year(§) 1963

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Margaret Wood, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26th day of May, 1970, she served the within

Notice of Decision (~~by certified mail~~) by (certified) mail upon Paul &

Lottie Banks (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Paul & Lottie Banks  
5417-15 Avenue  
Brooklyn, New York 11219

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~representative~~  
~~of~~) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (~~representative of the~~) petitioner.

Sworn to before me this

26th day of May, 1970.

Maria Buckley

Margaret Wood

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
PAUL AND LOTTIE BANKS  
For Redetermination of a Deficiency  
or for Refund of Personal Income  
Taxes under Article 22 of the Tax  
Law for the year 1963

DECISION  
ON  
TIMELINESS

Paul Banks and Lottie Banks, his wife, have petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1963. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the city of New York on February 26, 1970. The petitioner, Paul Banks, appeared and testified. The Income Tax Bureau was represented by Edward H. Best, Esq. (Albert J. Rossi, Esq. of counsel).

FINDINGS OF FACT:

1. On August 26, 1964, the U. S. Treasury Department, Internal Revenue Service, issued a notice of allowance of tentative carry-back adjustment, from the year 1963 to the year 1960, resulting in a refund of taxes and interest due to Paul and Lottie Banks in the amount of \$4598.74 for the year 1963.

2. The petitioners have timely filed a claim for credit or refund for the year 1963 with the Department of Taxation and Finance.

DECISION:

The Income Tax Bureau is directed to compute and process the appropriately correct amount of refund due to the petitioners, including statutory interest, by reason of the allowance of a tentative carryback adjustment by the U. S. Treasury Department,


In the Matter of the Petition of  
PAUL AND LOTTIE BANKS

(2)


Internal Revenue Service.

DATED: Albany, New York  
May 25, 1970

STATE TAX COMMISSION

  
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COMMISSIONER

  
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COMMISSIONER

  
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COMMISSIONER