

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GERARD E. & ROSE G. NISTAL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1963, 1964 & 1965

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

State of New York
County of Albany

Martha Funaro , 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 11th day of July , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Gerard E. &
Rose G. Nistal (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Gerard E. & Rose G. Nistal
42 Willis Avenue
South Wales, New York 14139

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

11th day of July , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 11, 1972

Gerard E. & Rose G. Nistal
42 Willis Avenue
South Wales, New York 14139

Dear Mr. & Mrs. Nistal:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
690 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 Months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
Hearing Officer

cc Petitioner's Representative
Law Bureau


STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
GERARD E. & ROSE G. NISTAL : DECISION
for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Years :
1963, 1964 and 1965. :

Gerard E. and Rose G. Nistal petitioned for a refund of income tax for the years 1963, 1964 and 1965. Formal hearings were held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on May 17 and 18, 1971.

The petitioners appeared personally at the hearing. The Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).



ISSUE

Were the petitioners' income tax returns, claiming refunds, filed within three years of payment so as to enable refund of overpayments made in income taxes withheld in 1963, 1964 and 1965?

FINDINGS OF FACT

1. Petitioners made refund claims of overpayments, of income taxes made through excess withholding of income taxes, for the years 1963, 1964 and 1965.

2. The refund claims were denied by the Income Tax Bureau on the ground that the returns were not filed prior to the expiration

of the three year period of limitations for the filing of refund claims under section 687 of the Tax Law.

3. The taxpayers petitioned for a formal hearing on the ground that the tax returns, claiming refunds, were mailed within the three year limitation contained in section 687 of the Tax Law.

4. The 1963 income tax return claiming a refund of withheld tax for 1963 was mailed to the Income Tax Bureau on or about August 19, 1968, and received by the Income Tax Bureau.

5. The 1964 income tax return claiming a refund of withheld tax for 1964 was mailed to the Income Tax Bureau on or about April 19, 1970, and received by the Income Tax Bureau.

6. The 1965 income tax return claiming a refund of withheld tax for 1965 was mailed to the Income Tax Bureau on or about April 13, 1970 and received by the Income Tax Bureau.

CONCLUSIONS OF LAW

A. The refund claims for the years 1963, 1964 and 1965, of overpayments of withheld tax, were not timely filed.

B. The denial of the refund claims is sustained.

DATED: Albany, New York
July 11, 1972

STATE TAX COMMISSION

Norman Gallucci
COMMISSIONER

Bruce Mawley
COMMISSIONER

Milton Korman
COMMISSIONER