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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN J. & ANNA MARIE NICIT

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

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 22nd day of February, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon JOHN J. & ANNA MARIE NICIT (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John J. & Anna Marie Nicit
RD #3, Box 333
East Lake Road
Geneva, New York
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

22nd day of February, 1973

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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age, and that on the 22nd day of February, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon JOHN J. NICIT, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

John J. Nicit, Esq.
Bonney and Nicit, Esqs.
20 West Main Street
Waterloo, New York

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

22nd day of February, 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 22, 1973

John J. & Anna Marie Nicit
RD #3, Box 333
East Lake Road
Geneva, New York

Dear Mr. and Mrs. Nicit:

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

Please take further notice that pursuant to **section 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 relat-
ing 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 :

JOHN J. & ANNA MARIE NICIT : DECISION

for a Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year :
1963.

John J. and Anna Marie Nicit petitioned for a redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1963.

A formal hearing was held on July 14, 1971 at the offices of the State Tax Commission, Rochester, New York, before L. Robert Leisner, Hearing Officer.

The petitioners were represented by John J. Nicit, Esq., and the Income Tax Bureau was represented by Edward H. Best., Esq. (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Does the delay in deciding or hearing petitioner's case compel the granting of their petition?

II. Does Section 607 of the Tax Law require New York State to follow federal income tax averaging as provided in Section 1301 of the Internal Revenue Code?

FINDINGS OF FACT

1. The petitioners filed a New York State income tax return for the year 1963 reporting income of \$26,164.00 for that year, which they sought to average over a period of the five previous years.

2. The Income Tax Bureau issued a Notice of Determination of Deficiency under File No. 37137402 disallowing the income averaging. The taxpayers timely filed a petition.

3. The petitioners submitted the case for decision in 1965. At the hearing the petitioners moved that their petition be granted because of the delay in any decision. Petitioners did not request a decision at any time nor move against the delay at any time prior to the hearing.

4. The petitioners also moved that their petition for income averaging be granted, contending that this was required by the Tax Law.

5. The Income Tax Bureau opposed both motions.

CONCLUSIONS OF LAW

A. The motion to grant the petition on the grounds of delay is denied.

B. Section 1301 of the Internal Revenue Code applies to computation of tax and not computation of gross income and has no counterpart in Article 22 of the Tax Law. Matter of Appel, State Tax Com. Dec. Nov. 25, 1968. Matter of Alaimo, State Tax Com. Dec. Aug. 12, 1971.

C. The petitioner's proposed averaging of income over five years is incorrect and unauthorized by law.

D. The petition is denied and the determination of the deficiency in income tax is sustained.

E. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
February 22, 1973

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koenig
COMMISSIONER