

In the Matter of the Petition

of

ANDREW and ANNE M. ROSEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) ~~xxxxxx~~ Period(s) 1968;
1969 and 1970.

State of New York
County of Albany

Donna Scranton, 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 10th day of November, 1976, she served the within Notice of Decision by (certified) mail upon Andrew and Anne M. Rosen ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Andrew Rosen
3020 Marcos Drive (S614)
North Miami Beach, Florida 33160

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ 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
10th day of November, 1976.

Donna Scranton

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ANDREW and ANNE M. ROSEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article(s) ²² of the
Tax Law for the Year(s) ~~or Period(s)~~ 1968,
1969 and 1970.

State of New York
County of Albany

Donna Scranton, 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 10th day of November, 1976, she served the within Notice of Decision by (certified) mail upon Irving Kushel, Accountant (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Irving Kushel
38 Atlas Avenue
Malverne, New York 11565

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) 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

10th day of November, 1976

Donna Scranton

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

November 10, 1976

TELEPHONE: (518) 457-3850

Mr. and Mrs. Andrew Rosen
3020 Marcos Drive (S614)
North Miami Beach, Florida 33160

Dear Mr. and Mrs. Rosen:

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 deci-
sion must be commenced within **4 months**
from the date of this notice.

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

Very truly yours,

Frank J. Puccia
FRANK J. PUCCIA
SUPERVISOR OF SMALL
CLAIMS HEARINGS

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ANDREW and ANNE M. ROSEN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the :
Years 1968, 1969 and 1970. :

Petitioners, Andrew and Anne M. Rosen, residing at 3020 Marcos Drive (S614), North Miami Beach, Florida 33160, have filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970. (File No. 4-63279802).

A small claims hearing was held on August 17, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. The petitioners appeared by Irving Kushel, Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Levy, Esq., of counsel).

ISSUE

Were petitioners, Andrew and Anne M. Rosen, entitled to a refund of New York State personal income taxes paid on dividend income erroneously included in their nonresident returns for

the years 1968, 1969 and 1970 when their claims for refund were filed more than three years from the time the tax returns were filed and more than two years from the time the tax was paid.

FINDINGS OF FACT

1. Petitioners, Andrew and Anne M. Rosen, filed combined New York State nonresident income tax returns for the years 1968, 1969 and 1970. The only New York income shown on the returns was dividend income. On or about March 31, 1975, petitioners, Andrew and Anne M. Rosen, filed claims for refunds for these years. The refunds claimed for 1968, 1969 and 1970 were in the amounts of \$496.00, \$424.00 and \$355.00 respectively. The Income Tax Bureau denied the refund claims upon the grounds that the claims were filed more than three years from the time the tax returns were filed and more than two years after the time the tax was paid.

2. On the New York State nonresident tax returns filed for 1968, 1969 and 1970, petitioners, Andrew and Anne M. Rosen, reported dividend and interest income as their only source of income. In the Federal column of Schedule A page two, they entered both dividend and interest income. They entered the dividend income in the New York column of Schedule A but not the interest income. There was no indication on the return as to the source of the dividend income.

CONCLUSIONS OF LAW

A. That there was no indication on the tax returns filed for 1968, 1969 and 1970 that the dividend income was not taxable in accordance with section 632(b)(2) of the Tax Law.

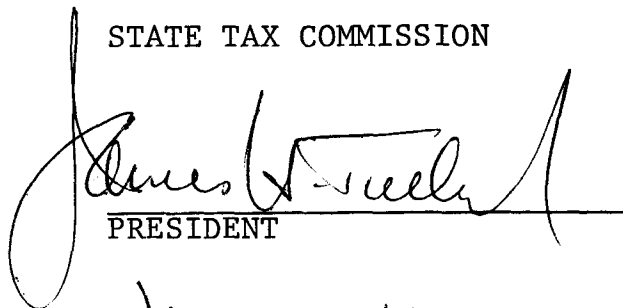
B. That the claims for refunds for 1968, 1969 and 1970 were not filed within three years from the date the returns were filed or two years from the time that the tax was paid and, therefore, no refund or credit may be issued in accordance with section 687 of the Tax Law.

C. That there was a question of fact or law involved and, therefore, no refund or credit may be issued under provisions of the special refund authority of section 697(d).


D. That the petition of Andrew and Anne M. Rosen for refund of taxes paid for the years 1968, 1969 and 1970 is denied and the Notice of Refund Denial is sustained.

DATED: Albany, New York
November 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER