

STATE OF NEW YORK,
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD A. and ROSE M. MORAN

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)~~
1960 through 1969.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August, 1978, he served the within
Notice of Decision by (certified) mail upon Edward A. & Rose M. Moran

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. & Mrs. Edward A. Moran
17 Elmwood Terrace
Wayne, New Jersey 07470

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
25th day of August, 1978.





STATE OF NEW YORK.
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD A. and ROSE M. MORAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1960 through 1969.

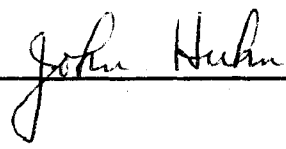
State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 1978, he served the within
Notice of Decision by (certified) mail upon James Thomson
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: James Thomson
Certified Public Accountant
473 Van Dyke Avenue
Haledon, New Jersey 07508
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
25th day of August , 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 25, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Mr. & Mrs. Edward A. Moran
17 Elmwood Terrace
Wayne, New Jersey 07470**

Dear Mr. & Mrs. Moran:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(5) 690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EDWARD A. and ROSE M. MORAN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1960 :
through 1969. :

Petitioners, Edward A. and Rose M. Moran, 17 Elmwood Terrace, Wayne, New Jersey 07470, 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 1960 through 1969 (File No. 00626).

A small claims hearing was held before Robert F. Mulligan, Hearing Officer, at the Offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 2, 1977 at 10:45 A.M. Petitioners appeared by James Thomson, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioners should be granted refunds for overpayment of personal income tax which resulted from the filing of joint rather than separate returns for the years 1960 through 1969, where the claims for refund were not timely filed.

FINDINGS OF FACT

1. At all times hereinafter mentioned, petitioners, Edward A. and Rose M. Moran, were residents of the State of New Jersey and were employed in the State of New York.

2. Petitioners timely filed joint New York State income tax nonresident returns on Form IT-203 for the years 1960 through 1972, inclusive. They also filed joint Federal income tax returns for said years.

3. In or about May of 1973, petitioners filed amended New York State income tax nonresident returns for the years 1960 through 1972 on combined Form IT-209. The effect of these amendments was to change the joint New York State filings to separate New York State filings. These changes also resulted in the calculation of a lower total tax for each year. Petitioners claimed refunds based on such lower amounts of tax.

4. Refunds were granted for the years 1970, 1971 and 1972, but were denied for the years 1960 through 1969 on the grounds that the claims for the earlier years were not timely filed.

5. The total amount of refunds claimed for the ten years at issue is \$3,720.31.

6. Petitioners believed that if they filed joint Federal returns they were required to file joint New York State returns. They had been so advised by their accountant, James Thomson, a New Jersey Certified Public Accountant. It was not until approximately May of 1973 that petitioners learned from friends in similar circumstances that they (petitioners) could file separately on the combined form and pay a lower total tax to New York State.

7. Petitioners' accountant admitted responsibility for preparing their returns on Form IT-203 rather than IT-209.

8. Form IT-203 for each of the years at issue contained a notice in bold type on the face of each form to the effect that if a husband and wife file a joint Federal return and elect to file separate State returns, they should file Form IT-209 rather than IT-203. The notice on the 1960 form, for example, read as follows:

"Note: If husband and wife file a joint Federal return and elect to file separate State returns, do not use this form. Use Form IT-209."

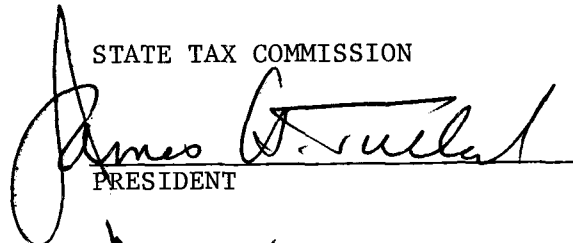

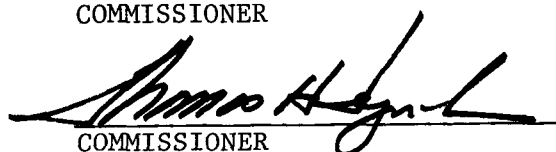
CONCLUSIONS OF LAW

A. That petitioners' claims for refund of overpayment of income tax for the years 1960 through 1969 were not filed within the period of limitation set forth in section 687 of the Tax Law and, thus, were not timely filed.

B. That under the facts of this case, the Tax Commission does not chose to exercise the special refund authority granted to it under section 697(d) of the Tax Law.

C. That the petition of Edward A. and Rose M. Moran is denied.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER