

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK B. MANCHEE
and GLADYS MANCHEE

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~~
1969, 1970.

State of New York
County of Albany

John Huhn, 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 27th day of February, 1979, she served the within

Notice of Decision by (certified) mail upon Frederick B. Manchee
and Gladys Manchee ~~XXXXXX~~ the petitioner in the within proceeding,

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

Frederick B. Manchee and
Gladys Manchee
299 Harbour Drive
Naples, FL

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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

27th day of February, 1979

Maureen J. Papneau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition . :
of :
FREDERICK B. MANCHEE : AFFIDAVIT OF MAILING
and GLADYS MANCHEE :
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~~ :
1969 and 1970. :

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 27th day of February , 1979, He served the within
Notice of Decision by (certified) mail upon Albert M. Goldstein
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Albert M. Goldstein, CPA
501 Fifth Avenue
New York, NY 10017

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
27th day of February , 1979.

Marilyn J. Papineau

John Huhn



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

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

February 27, 1979

**Mr. & Mrs. Manchee
299 Harbour Drive
Naples, FL**

Dear Mr. & Mrs. Manchee:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **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,

Michael Alexander
Supervising Tax Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FREDERICK B. MANCHEE :
and GLADYS MANCHEE : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Years 1969 and 1970. :
:

Petitioners, Frederick B. Manchee and Gladys Manchee, 299 Harbour Drive, Naples, Florida, 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 1969 and 1970 (File No. 15497).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 25, 1977 at 9:15 A.M. Petitioners appeared by Albert M. Goldstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the Statute of Limitations bars the Income Tax Bureau from denying petitioners' claims for refund for 1969 and 1970.

FINDINGS OF FACT

1. Petitioners, Frederick B. Manchee and Gladys Manchee, signed and timely filed joint New York State income tax nonresident returns for 1969 and 1970, claiming refunds of \$5,501.52 and \$5,501.64 directly on the returns which they filed for those respective years.

2. The Income Tax Bureau's letters dated August 7, 1970 and May 28, 1971, informed petitioners that their refund claims for 1969 and 1970, respectively, would be held in abeyance, pending the State Tax Commission's decision on the proper allocation of petitioner Frederick B. Manchee's income for the years 1963 through 1965. Said allocation of income would be determinative of whether petitioner Frederick B. Manchee's retirement benefits were tax exempt for 1969 and 1970.

3. On March 29, 1976, the Income Tax Bureau issued a Notice of Disallowance of petitioners' refund claims for 1969 and 1970. The Income Tax Bureau partially denied petitioners refund claims on the grounds that petitioner Frederick B. Manchee's retirement receipts failed to qualify as exempt annuities under 20 NYCRR 131.4(d); therefore, said receipts were taxable to New York State.

4. At the same time as the issuance of the March 29, 1976 partial Notice of Disallowance, the Income Tax Bureau issued a voucher for income tax refund (Voucher No. 52429996), on recomputing petitioners' returns for 1969 and 1970. The recomputations were made necessary by petitioners' failure initially to claim itemized

deductions, exemptions and statutory credits on their 1969 and 1970 returns. This resulted in partial refunds of personal income tax being paid to petitioners in the following amounts: \$1,691.32 for 1969 and \$1,836.76 for 1970, plus \$1,146.88 in interest, for a total refund of \$4,674.96.

5. On June 28, 1976, the Income Tax Bureau received the petition of Frederick and Gladys Manchee for refund, sworn to on June 24, 1976, for 1969 and 1970. On said petition, petitioners claimed refunds totaling \$7,475.00 (\$3,810.00 for 1969 and \$3,665.00 for 1970), representing the disallowed portions of petitioners' refund claims for 1969 and 1970.

CONCLUSIONS OF LAW

A. That it was within the power of the Income Tax Bureau to issue its March 29, 1976 Notice of Disallowance, in response to petitioners' timely claims for refund for 1969 and 1970. Although the statute of limitations may have barred the assessment and collection of any additional sum, it does not obliterate the right to retain payments already received when they do not exceed the amount which might have been properly assessed. (Lewis v. Reynolds 284 U.S. 281)

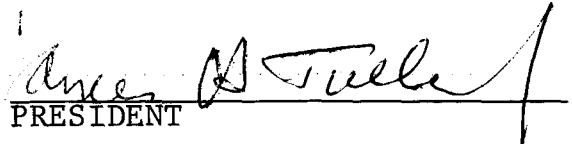
B. That it was within the power of the Income Tax Bureau to issue a partial allowance of petitioners' claims for refund on March 29, 1976, of income withholding tax overpayments, as defined by section 686(b) of the Tax Law.

C. That the petition of Frederick B. Manchee and Gladys Manchee is denied.

DATED: Albany, New York

February 27, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

.....
COMMISSIONER