

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Ethel Fields :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1972. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Ethel Fields, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ethel Fields
12 W. 68 St.
New York, NY 10023

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

Sworn to before me this
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Ethel Fields
12 W. 68 St.
New York, NY 10023

Dear Ms. Fields:

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(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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
EHTHEL FIELDS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioner, Ethhel Fields, 12 West 68th Street, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 18701).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 25, 1979 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether a claim for refund for 1972 was filed prior to the expiration of the period of limitation.

FINDINGS OF FACT

1. Petitioner, Ethhel Fields, mailed in one envelope, New York State income tax resident returns for 1970, 1971, 1972 and 1973. The 1970 tax return indicated no tax or refund due. The tax returns for 1971, 1972 and 1973 requested refunds of \$33,84, \$119.19, and \$43.92, respectively.

2. On October 14, 1976, the Audit Division issued a "Voucher For Income Tax Refund," which indicated:

"Total wages reported of \$3,188.35 on your 1973 delinquent return is corrected to the amount of \$3,938.35 to agree with the total of your 1973 Wage and Tax Statements. The tax computed as shown per table with one exemption already reflects yourself as a dependent.

"Your 1970 delinquent return is being accepted as filed and closed as an even return.

"Refunds of \$33.84 and \$119.19 claimed on your 1971 and 1972 delinquent returns received August 5, 1976, are not allowed as the final dates for filing these returns expired on April 15, 1975 for 1971 and April 15, 1976 for 1972 under the Statute of Limitations."

Petitioner Ehtel Fields conceded to the Audit Division's findings for 1970, 1971 and 1973, but disputes its determination for 1972.

3. Petitioner argued that she mailed the federal, New York State and New York City income tax returns for 1970, 1971, 1972 and 1973 on April 14, 1976. As proof of mailing, petitioner submitted a receipt for postage, handwritten by her, and postmarked by the United States Post Office on April 14, 1976.

4. The 1970 and 1973 tax returns filed by petitioner contained various "indate" stamps displaying the dates May 25, 1976, August 6, 1976 and August 29, 1976. The envelope in which the tax returns were mailed contained a postmark without a date. However, someone unknown to petitioner or the Audit Division, wrote on the envelope the date "April 28" and circled it.

5. The Internal Revenue Service issued a notice correcting an arithmetic error for the year 1972 on May 24, 1976. The United States Treasury issued a refund check for the year 1972 on July 2, 1976.

6. The original New York State income tax resident return for 1972, which requested a refund of \$119.19, could not be located by the Audit Division.

7. Processing procedures established by the Audit Division provide that a delinquent return (a return filed after its due date) be stamped with the date of receipt, and that that date is the date the delinquent return is considered to have been filed.

CONCLUSIONS OF LAW

A. That petitioner Ehtel Fields has sustained the burden of proof required

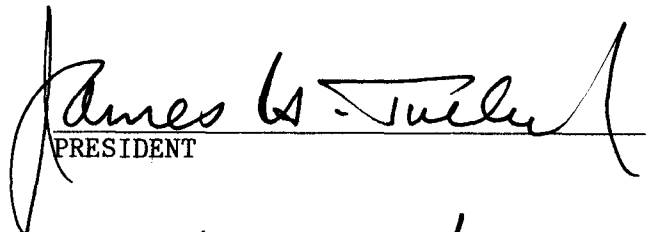
by section 689(e) of the Tax Law, in establishing, by a fair preponderance of all the available evidence, that she filed a New York State income tax resident return for 1972 before the expiration of the applicable period of limitation specified in Article 22 of the Tax Law.

B. That the petition of Ehtel Fields is granted and the Audit Division is directed to refund the sum of \$119.19, together with such interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 16 1980


PRESIDENT


COMMISSIONER


COMMISSIONER