

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Schichiro & Norma F. Hayashi :
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 Years 1966 - 1967. :

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 Schichiro & Norma F. Hayashi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Schichiro & Norma F. Hayashi
36 Hamilton Ave.
Staten Island, NY 10301
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 Krapp

J. Vredenburg

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

May 16, 1980

Schichiro & Norma F. Hayashi
36 Hamilton Ave.
Staten Island, NY 10301

Dear Mr. & Mrs. Schichiro:

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 :
SHICHIRO HAYASHI and NORMA F. HAYASHI : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1966 and 1967.

Petitioners, Shichiro Hayashi and Norma F. Hayashi, 36 Hamilton Avenue, Staten Island, New York 10301, 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 1966 and 1967 (File No. 14333).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 20, 1978 at 2:45 P.M. Petitioner Shichiro Hayashi appeared pro se and for his wife, petitioner Norma F. Hayashi. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly computed petitioners' New York State personal income tax liability for 1966 and 1967.

FINDINGS OF FACT

1. Petitioners, Shichiro Hayashi and Norma F. Hayashi, did not file New York State personal income tax resident returns for 1966 and 1967.
2. On May 21, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioners, on the grounds that they were required to file New York State personal income tax returns for 1966 and 1967, and that petitioners

failed to do so. The Notice asserted a tax due of \$1,123.12 for 1966 and \$754.99 for 1967, plus penalty (pursuant to section 685(a) of the Tax Law) and interest for both years. The Income Tax Bureau based its computations on material received from the Internal Revenue Service. This material indicated that petitioners' taxable income was \$17,756.23 and \$14,111.01 for 1966 and 1967, respectively.

3. Petitioners contended that the adjustments made by the Internal Revenue Service as reflected on the Statement of Audit Changes were not the final Federal determination.

4. The Audit Division submitted copies of Federal documents showing the Federal adjustments for the years at issue (Exhibit D). Included in Exhibit D was a Federal Appellate Division Action document which the Audit Division contended may or may not have been the final determination. This document indicated a lower taxable income than that upon which the Statement of Audit Changes was based. The Audit Division also submitted Exhibit E which was its computation of petitioners' New York State revised tax liability should the Federal Appellate Division Action document prove to be the final determination.

5. Subsequent to the hearing, at the request of the Audit Division and the Hearing Officer, petitioners submitted documentation substantiating that the Federal Appellate Division Action document was, in fact, the final Federal determination.

6. Exhibit E was corrected for minor errors and resulted in the following:

	<u>1966</u>	<u>1967</u>
Total New York Income	\$14,267.00	\$8,558.75
Less: Standard Deduction	1,000.00	
Itemized Deduction		3,535.00
Balance	<u>\$13,267.00</u>	<u>\$5,023.75</u>
Less: Exemptions	3,000.00	3,000.00
New York Taxable Income	<u>\$10,267.00</u>	<u>\$2,023.75</u>
New York Tax	\$ 468.69	\$ 50.71
Statutory Credit	25.00	25.00
New York Tax Due	<u>\$ 443.69</u>	<u>\$ 25.71</u>
Penalty	\$ 110.92	\$ 6.43

CONCLUSIONS OF LAW

A. That the Income Tax Bureau did not properly compute the New York State personal income tax liability of Shichiro Hayashi and Norma F. Hayashi for the years 1966 and 1967. The proper computation of tax and penalty is shown in Finding of Fact "6" above.

B. That the petition of Shichiro Hayashi and Norma F. Hayashi is granted to the extent indicated in Conclusion of Law "A" and Finding of Fact "6", above; that the Audit Division is hereby directed to modify the Notice of Deficiency issued May 21, 1973; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER