

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lawrence & Isabelle Bain :
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 1973. :

AFFIDAVIT OF MAILING

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Lawrence & Isabelle Bain, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence & Isabelle Bain
3055 Bouck Ave., Apt. 6H
Bronx, NY 10469

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
20th day of February, 1981.

Annie A. Haglund

J. Vredenburg

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

February 20, 1981

Lawrence & Isabelle Bain
3055 Bouck Ave., Apt. 6H
Bronx, NY 10469

Dear Mr. & Mrs. Bain:

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

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| In the Matter of the Petition | : | |
| of | : | |
| LAWRENCE BAIN and ISABELLE BAIN | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1973. | : | |

Petitioners, Lawrence Bain and Isabelle Bain, 3055 Bouck Avenue, Apt. 6H, Bronx, New York 10469, 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 1973 (File No. 23741).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 8, 1980 at 10:45 A.M. Petitioners, Lawrence Bain and Isabelle Bain, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's claim for refund for the year 1973 was properly denied due to the running of the statute of limitations.

FINDINGS OF FACT

1. Petitioners, Lawrence Bain and Isabelle Bain, filed a joint New York State Income Tax Resident Return for the year 1973 on August 2, 1977. Said return sought a refund in the amount of \$472.24.

2. On August 28, 1978, the Audit Division notified petitioners that the aforementioned claim for refund was denied in full due to the expiration of the statute of limitations for issuing refunds.

3. Petitioners do not dispute that the return was filed on August 2, 1977 nor do they argue that the claim for refund was timely filed. Petitioners contend that the return was filed late due to illness and that the instruction booklet which accompanied their blank return did not make any mention of a time limit on refund claims.

CONCLUSIONS OF LAW

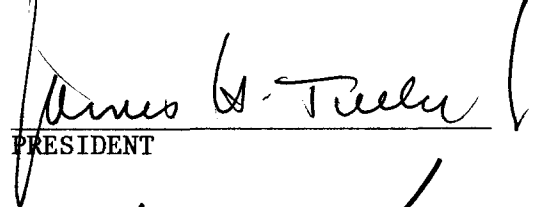
A. That petitioners, Lawrence Bain and Isabelle Bain, did not make a timely claim for refund for the year 1973 within the meaning and intent of section 687(a) of the Tax Law.

B. That the petition for refund of Lawrence Bain and Isabelle Bain is denied and the notice of refund denial dated August 28, 1978 is sustained.

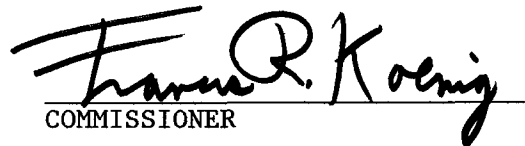
DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER