

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Abris Degaal :
and Helen (Deceased) Degaal :
: 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 1972, 1973 & 1974 :

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Abris Degaal, and Helen (Deceased) Degaal, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abris Degaal
and Helen (Deceased) Degaal
124 Vanderbilt Rd.
Manhasset, NY 11030

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
10th day of April, 1981.

Cornelia A. Hegelund

Jay Vredenburg

In the Matter of the Petition :
of :
Abris Degaal :
and Helen (Deceased) Degaal :
: 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 1972, 1973 & 1974 :

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Simon Akst the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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
10th day of April, 1981.

Armin A. Hagelund

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

April 10, 1981

Abris Degaal
and Helen (Deceased) Degaal
124 Vanderbilt Rd.
Manhasset, NY 11030

Dear Mr. Degaal:

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
Simon Akst
Akst, Weiss & Co.
85 W. Hawthorne Ave.
Valley Stream, NY 11580
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
ABRIS DEGAAL and HELEN (DECEASED) DEGAAL
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1972, 1973 and 1974.

DECISION

Petitioners, Abris DeGaal and Helen (Deceased) DeGaal, 124 Vanderbilt Road, Manhasset, New York 11030, 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 1972, 1973 and 1974 (File No. 16466).

A small claims hearing was scheduled before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 21, 1980 at 1:15 P.M.

On said date, petitioners' representative requested that the small claims hearing be waived and that the case be submitted to the State Tax Commission, based on the entire record contained in the file. Confirmation of this request was incorporated in the power of attorney dated April 26, 1980. After consideration of said record, the Commission renders the following decision.

ISSUE

Whether petitioners are entitled to refunds for the years 1972, 1973 and 1974 for taxes paid on capital gains where said capital gains were also previously reported on their 1971 tax return.

FINDINGS OF FACT

1. Petitioners, under date of June 11, 1971, sold their interest in real estate from which they realized a capital gain. Petitioners reported the gain from the sale on the installment method, based on a percentage of profit

realized, for Federal and New York State income tax purposes.

In filing their 1971 Federal and New York State income tax returns, the petitioners overstated the capital gains realized as a result of including the balance of the first mortgage as income received in that year.

2. Petitioners filed separate New York State income tax resident returns for 1972, 1973 and 1974. Petitioners included in their reported income for subject years, the capital gains previously reported by them in their 1971 tax return.

3. On December 20, 1975, based on the above duplication of reported income, petitioners filed claims for credit or refund, Form IT-113X, for 1972, in the amount of \$188.00; for 1973, in the amount of \$191.00 and for 1974, in the amount of \$125.00, for a total of \$504.00.

4. On June 4, 1976, the Audit Division disallowed petitioners' claim for credit or refund on the basis that "capital gains received in 1972, 1973 and 1974 must be reported in the year received. This income may not be reduced by income reported in a previous year. However, if the Internal Revenue Service has allowed adjustments on your 1971 return, please forward copies of the document and we will consider the changes." The petitioners submitted copies of documents filed with the Internal Revenue Service, which consisted of claims for refund for 1972, 1973 and 1974. However, no claim was filed for 1971.

CONCLUSIONS OF LAW

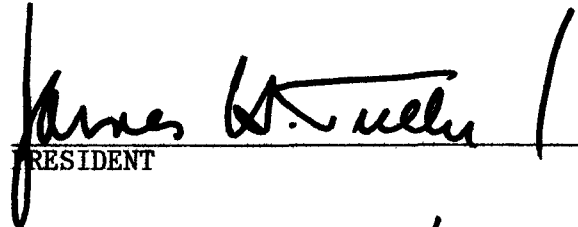
A. That petitioners' erroneous inclusion in more than one taxable year of the same item of income may not be corrected for the years in which income was correctly reported. That petitioners' inclusion of capital gains on their New York State personal income tax returns was correctly reported for 1972, 1973 and 1974 and, therefore is not subject to claim for refund.

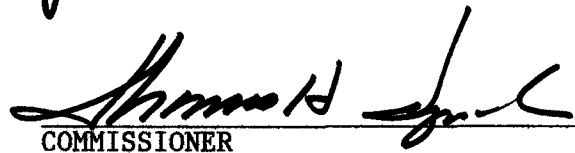
B. That the Notice disallowing petitioners' claim for credit or refund dated June 4, 1976 for subject years is sustained.

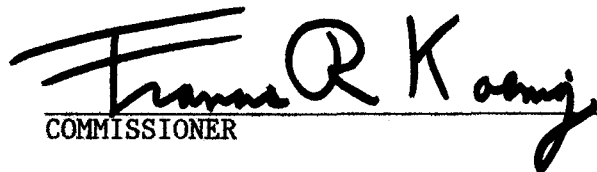
DATED: Albany, New York

STATE TAX COMMISSION

APR 10 1981


RESIDENT


COMMISSIONER


COMMISSIONER