

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Jesse W. & Gloria M. Hamilton :  
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 :  
1974.

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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Jesse W. & Gloria M. Hamilton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jesse W. & Gloria M. Hamilton  
2917 Bouck Ave.  
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  
25th day of September, 1981.

*Carrie R. Hegeland*

*J. Vredenburg*

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

September 25, 1981

Jesse W. & Gloria M. Hamilton  
2917 Bouck Ave.  
Bronx, NY 10469

Dear Mr. & Mrs. Hamilton:

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	:	
JESSE W. HAMILTON and GLORIA M. HAMILTON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1974.	:	

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Petitioners, Jesse W. Hamilton and Gloria M. Hamilton, 2917 Bouck Avenue, 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 1974 (File No. 21837).

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 February 25, 1981 at 10:45 A.M. Petitioner, Jesse W. Hamilton, appeared pro se and for his wife, petitioner Gloria M. Hamilton. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the Notice of Deficiency was erroneous and/or inaccurate.

FINDINGS OF FACT

1. Petitioners, Jesse W. Hamilton and Gloria M. Hamilton, timely filed a joint New York State Income Tax Resident Return for the year 1974, on which itemized deductions of \$8,429.39 were claimed.

2. On April 10, 1978, the Audit Division issued a Notice of Deficiency for \$132.35 plus interest, along with an explanatory Statement of Audit Changes, on which:

- (a) unreported federal audit adjustments were imposed reducing itemized deductions by \$728.52.
- (b) itemized deductions were reduced by \$984.26 in state and local taxes included in the itemized deductions.

3. Petitioner, Jesse W. Hamilton, testified that he did not agree with the federal audit adjustments and that he was "forced" into consenting to them. Although given the opportunity, petitioner did not submit any evidence establishing that he was entitled to the itemized deductions disallowed by the Internal Revenue Service, or that the Notice of Deficiency issued April 10, 1978 was erroneous and/or inaccurate.

CONCLUSIONS OF LAW

A. That petitioners, Jesse W. Hamilton and Gloria M. Hamilton, have failed to sustain the burden of proof as required by section 689(e) of the Tax Law.

B. That the Notice of Deficiency issued April 10, 1978 was properly issued within the purview of sections 681(a) and 681(e) of the Tax Law.

C. That the petition of Jesse W. Hamilton and Gloria M. Hamilton is denied and the Notice of Deficiency issued April 10, 1978 is sustained together with such additional interest lawfully owing.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER