

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Edward F. & Kathleen Manhart :
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 :
1973.

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Edward F. & Kathleen Manhart, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward F. & Kathleen Manhart
474 Willowgreen Dr.
Amherst, NY

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
30th day of October, 1981.

Annie R. Hegelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
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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 30th day of October, 1981, he served the within notice of Decision by certified mail upon F. C. Williams the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

F. C. Williams
19 Marilyn Ct.
Tonawanda, NY 14150

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
30th day of October, 1981.

Annie A. Dugeland

J. Vredenburg

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

October 30, 1981

Edward F. & Kathleen Manhart
474 Willowgreen Dr.
Amherst, NY

Dear Mr. & Mrs. Manhart:

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
F. C. Williams
19 Marilyn Ct.
Tonawanda, NY 14150
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
EDWARD F. MANHART and KATHLEEN MANHART	:	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, Edward F. Manhart and Kathleen Manhart, 474 Willowgreen Drive, Tonawanda, New York 14150, 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. 15892).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on January 27, 1981 at 2:45 P.M. Petitioners appeared by F. C. Williams. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency should be dismissed on the grounds of laches.

II. Whether the statutory period of limitation on assessment had expired since assessment was not made within the three years.

FINDINGS OF FACT

1. Petitioners, Edward F. Manhart and Kathleen Manhart, timely filed a joint New York State Income Tax Resident Return for 1973.

2. On May 24, 1976, the Audit Division issued a Statement of Audit Changes wherein, as the result of an audit, a casualty loss was disallowed.

Accordingly, a Notice of Deficiency was issued against petitioners on May 24, 1976 asserting additional personal income tax due in the amount of \$487.61, plus interest of \$77.05, for a total due of \$564.66.

3. On July 27, 1976, the petitioners filed a petition with New York State Tax Commission.

4. On December 22, 1980, a Notice of Small Claims Hearing was given to the petitioners, scheduling a hearing on January 27, 1981.

5. At the hearing, the petitioners asserted that the State Tax Commission be barred from proceeding with this matter because of the inordinate amount of time which had lapsed since the filing of the petition in question.

6. The petitioners further argued that the statute of limitations had passed based on the following from the Internal Revenue Service's Publication 17, Your Federal Income Tax, for use in preparing 1980 returns, page 9:

Records that support an item of income or a deduction appearing on a return must be kept until the statute of limitations for the return runs out. Usually this is 3 years from the date the return was due or 2 years from the date the tax was paid, whichever is later.

CONCLUSIONS OF LAW

A. That the State Tax Commission is not estopped from making a claim against petitioners. A state agency or body cannot be estopped from asserting its governmental power regarding acts within its governmental capacity. That the record in the instant case shows no undue delay by the State Tax Commission in instituting action, therefore, the remedy of laches claimed by petitioners is unfounded.

B. That the Notice of Deficiency issued against petitioners on May 24, 1976 for 1973 was issued within three years after the New York State Income Tax Resident Return was filed. Section 683(e) of the Tax Law states that "The

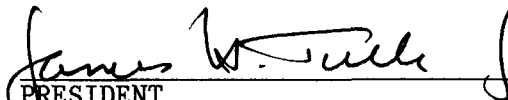
running of the period of limitations on assessment or collection of tax or other amount...shall, after the mailing of a Notice of Deficiency, be suspended for the period during which the Tax Commission is prohibited under subsection (c) of section six hundred eighty-one from making the assessment or from collecting by levy." The Audit Division is not barred from assessing tax when a Notice of Deficiency is issued within three years after a return is filed.

C. That the petition of Edward F. Manhart and Kathleen Manhart is denied and the Notice of Deficiency issued May 24, 1976 is sustained, together with such additional interest as may be lawfully owing.

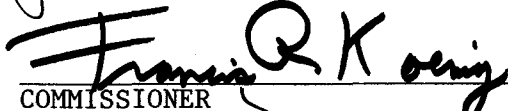
DATED: Albany, New York

STATE TAX COMMISSION

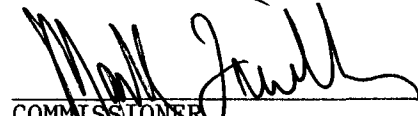
OCT 30 1981



PRESIDENT



COMMISSIONER



COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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Edward F. & Kathleen Manhart
27 W. Girard Blvd.
Kenmore, NY 14217

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
30th day of December, 1981.

Annie P. Hagelund

J. Vredenburg

474 Willowgreen Drive
Bronxwanda, New York
November 12, 1981

N.Y.S. Dept. Taxation & Finance
Deputy Commissioner & Counsel
Albany, New York 12237
To Whom it may concern:

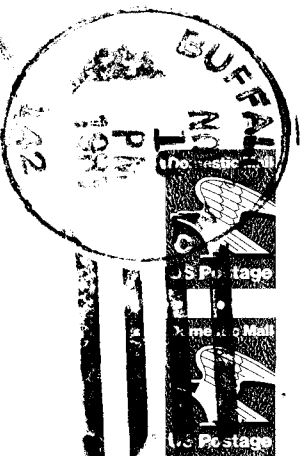


This letter was sent to this
address in error. Edward Manhart
no longer resides here. My Son
whose name is Edward signed
for it and opened it by mistake,
he is Twelve (12) years old.
He now resides at 27 W. Girard Ave.
Kensmore, New York 14217. Please
send to correct address.

Sincerely yours,
Kathleen Manhart

Kathy Manhart
474 Willow Green Drive
Amherst, NY 14150

State of New York
State Tax Commissioner
Tax Appeals Bureau
State Campus
Albany New York 12227



(9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



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4/15/79

Edward F. & Kathleen Manhart
474 Willowgreen Dr.
Amherst, NY

CERTIFIED

P34 37 2777

MAIL