

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Gerald & Virginia Orseck :

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 1969 & 1970. :

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 27th day of February, 1981, he served the within notice of Decision by certified mail upon Gerald & Virginia Orseck, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald & Virginia Orseck  
1 Vista Drive  
Liberty, NY 12754

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  
27th day of February, 1981.

*Carmie P. Hagelund*

*J. Vredenburg*

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

February 27, 1981

Gerald & Virginia Orseck  
1 Vista Drive  
Liberty, NY 12754

Dear Mr. & Mrs. Orseck:

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	:	
	:	
GERALD ORSECK and VIRGINIA ORSECK	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	

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Petitioners, Gerald Orseck and Virginia Orseck, 1 Vista Drive, Liberty, New York 12754, 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 1969 and 1970 (File No. 20297).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 7, 1979 at 9:15 A.M. Petitioner Gerald Orseck appeared pro se and for his wife, petitioner Virginia Orseck. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Notice of Deficiency dated September 26, 1977 is barred by the statute of limitations.

FINDINGS OF FACT

1. Petitioners, Gerald Orseck and Virginia Orseck, timely filed New York State income tax resident returns for the years 1969 and 1970.
2. On September 26, 1977, the Audit Division issued against petitioners a Notice of Deficiency asserting that additional personal income tax of \$4,903.92 was due for the year 1970. The total tax and interest due for 1970 was reduced

by \$166.20, said amount representing the overpayment due petitioners for the year 1969.

3. Both the overpayment and the additional tax due, as determined in the aforementioned Notice of Deficiency, were based entirely on adjustments made to petitioners' respective Federal income tax returns as the result of an examination conducted by the Internal Revenue Service. The adjustments proposed by the Internal Revenue Service for the years 1969 and 1970 became final, prior to a United States Tax Court trial, via a stipulation filed on January 22, 1976.

4. The changes made in Federal taxable income for the years 1969 and 1970, as the result of the stipulation filed on January 22, 1976, were not reported by petitioners to the New York State Department of Taxation and Finance. Petitioners concede the mathematical accuracy of the Audit Division's computation of tax due for 1970 and overpayment for 1969. It is petitioners' sole contention that the Notice of Deficiency dated September 26, 1977 was issued after the expiration of the statute of limitations on assessments as provided for in section 683 of the Tax Law.

#### CONCLUSIONS OF LAW

A. That petitioners failed to properly report the changes made in Federal taxable income for the years 1969 and 1970 within the meaning and intent of section 659 of the Tax Law and 20 NYCRR 153.1.

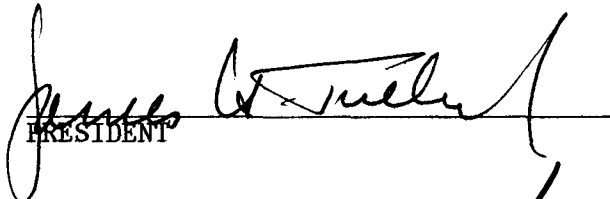
B. That section 683(c)(1)(C) of the Tax Law provides that the tax may be assessed at any time if "the taxpayer or employer fails to comply with section six hundred fifty-nine in not reporting a change or correction increasing his federal taxable income...". The Notice of Deficiency dated September 26, 1977 was timely issued within the meaning and intent of section 683(c)(1)(C) of the Tax Law.

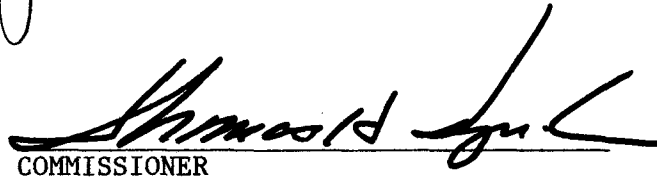
C. That the petition of Gerald Orseck and Virginia Orseck is denied and the Notice of Deficiency issued September 26, 1977 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 27 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER