

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard & Sadie Rappaport :
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 :
1965.

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Bernard & Sadie Rappaport, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard & Sadie Rappaport
161 Exeter St.
Brooklyn, NY 11235

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
23rd day of October, 1981.

Ann G. Haglund

Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
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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
23rd day of October, 1981.

Annex Q. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard & Sadie Rappaport :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Tax under Article 22 of the Tax Law for the Year :
1965.

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Theodore Harris the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Theodore Harris
51 Madison Ave.
New York, NY 10010

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
23rd day of October, 1981.

Annex Q. Hagelund

J. Vredenburg

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

October 23, 1981

Bernard & Sadie Rappaport
161 Exeter St.
Brooklyn, NY 11235

Dear Mr. & Mrs. Rappaport:

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
Theodore Harris
51 Madison Ave.
New York, NY 10010
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BERNARD RAPPAPORT and SADIE RAPPAPORT	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1965.	:	

Petitioners, Bernard Rappaport and Sadie Rappaport, 161 Exeter Street, Brooklyn, New York, 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 1965 (File No. 15221).

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 May 17, 1979. Petitioners appeared by Theodore Harris, Esq. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether and to what extent a penalty should be imposed under section 685(a)(1) of the Tax Law for failure to file a personal income tax return for 1965.

FINDINGS OF FACT

1. A Notice of Deficiency in personal income tax for the year 1965 was issued on March 26, 1973 against Bernard and Sadie Rappaport. Said deficiency was in the amount of \$11,670.61, plus interest of \$4,869.31 and a penalty of 25 percent under section 685(a)(1) of the Tax Law for failure to file a timely tax return and a penalty of 5 percent under 685(b) of the Tax Law for negligence or

an intentional disregard of the Tax Law or rules or regulation thereunder. The penalties amounted to \$3,501.18.

2. On April 30, 1976, petitioners filed a report of a change in their 1965 Federal taxable income (Form IT-115) on which they computed a correct tax due of \$9,275.10. Credit was taken for tax of \$192.88 previously shown on a return. A check was enclosed in the amount of \$14,576.96. Final Federal audit results indicated that negligence penalties originally asserted had been withdrawn.

3. (a) Petitioner Bernard Rappaport testified that the 1965 New York State combined income tax return was filed on or about October 11, 1966. In support of his testimony an unsigned copy of the return was submitted bearing a date of October 11, 1966.

(b) The return referred to in Finding of Fact "3a" supra. showed a New York Tax of \$192.88 for Bernard Rappaport, after statutory credit. Said return also indicated withholding prepayments of \$91.00 and estimated tax payments of \$3,650.00. The return further indicated that \$50.57 of the prepayments were to be applied to the New York tax due Mrs. Rappaport with the balance applied to Mr. Rappaport, netting out to a claimed refund of \$3,497.55.

(c) In furtherance of petitioners' contention that the 1965 state return was filed, petitioners noted that on their Report of Federal Audit Changes (Form IT-115) they indicated that the tax previously stated was \$192.88. Petitioners submitted three cancelled checks which showed that the checks were deposited as estimated tax monies during 1965. One of said checks bore the same deposit number as a Statement of Estimated Tax Account (Form IT-2105.1) also submitted by petitioners in support of their contention.

4. Mr. Rappaport testified that petitioners filed a 1965 New York return at the same time as he filed their 1965 Federal return. There has been no penalty for failure to file asserted by the Federal government.

CONCLUSIONS OF LAW

A. That section 685 of the Tax Law provides in part as follows:

"Additions to tax and civil penalties --(a)(1) Failure to file tax return.--In case of failure to file a tax return under this article on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five per cent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For this purpose, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of tax and by the amount of any credit against the tax which may be claimed upon the return."

B. That petitioners through testimony and evidence have sustained their burden of proof to show that they filed a 1965 New York personal income tax return on or about October 11, 1966.

C. That petitioners have not sustained the burden of proof imposed under section 689(e) of the Tax Law to show that said return, filed on or about October 11, 1966, was filed in accordance with a valid State or Federal extension of time.

D. That penalty imposed for failure to file a tax return on or before the prescribed date was properly imposed within the meaning and intent of section 685(a)(1) of the Tax Law.

E. That the petition of Bernard Rappaport and Sadie Rappaport is granted to the extent noted in Findings of Fact 2 and in Conclusion of Law "B" and the Audit Division is accordingly directed to modify the deficiency allowing credit for such tax paid with the return and such tax and interest paid with the

Report of Federal Audit change as stated in Findings of Fact 2 and 3(b).

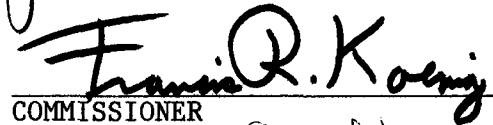
Except as so granted the petition is in all other respects denied.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER