

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stephen P. Teitelbaum :
and Barbara S. Teitelbaum :
: 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 :
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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Stephen Teitelbaum, and Barbara S. Teitelbaum, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen P. Teitelbaum
and Barbara S. Teitelbaum
180 E. Main St., Rm. 208
Smithtown, NY 11787

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
15th day of May, 1981.

Annice A. Hagelund

J. Vredenburg

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

May 15, 1981

Stephen P. Teitelbaum
and Barbara S. Teitelbaum
180 E. Main St., Rm. 208
Smithtown, NY 11787

Dear Mr. & Mrs. Teitelbaum:

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

In the Matter of the Petition :
of :
STEPHEN P. TEITELBAUM and BARBARA S. TEITELBAUM : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1974. :

Petitioners, Stephen P. Teitelbaum and Barbara S. Teitelbaum, 180 East Main Street, Room 208, Smithtown, New York 11787, 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. 21507).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1980 at 2:45 P.M. Petitioner Stephen Teitelbaum appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioners are entitled to credit for New York State tax withheld from wages for an amount which is greater than that reported on Stephen P. Teitelbaum's wage and tax statement.

FINDINGS OF FACT

1. Petitioners, Stephen P. Teitelbaum and Barbara S. Teitelbaum, filed a joint 1974 New York State Income Tax Resident Return on October 20, 1975. Said return claimed credit for New York State tax withheld from wages in the amount of \$646.36.

2. On December 19, 1977, the Audit Division issued against petitioners a Notice of Deficiency asserting that additional personal income tax of \$130.00 was due together with interest. The deficiency is based on the grounds that the correct New York State tax withheld from petitioner Stephen P. Teitelbaum's wages was \$516.36 and not \$646.36, as claimed on petitioners' return.

3. During the entire year 1974, petitioner Stephen P. Teitelbaum was employed as a certified public accountant by the firm of Hoberman, Miller & Co., P.C. Hoberman, Miller & Co., P.C. paid petitioner a salary of \$350.00 per week from which it deducted Federal withholding tax of \$42.53, New York State withholding tax of \$9.93 and F.I.C.A. tax of \$20.48.

4. For the year 1974 the first \$13,200.00 of wages were subject to F.I.C.A. tax. Petitioner reached the maximum amount of wages subject to F.I.C.A. tax during the week ending September 20, 1974. Petitioner Stephen P. Teitelbaum's testimony adduced at the hearing held herein indicated that his payroll checks were processed via computer and because of the manner in which the computer was programed, the weekly gross pay, deductions and net pay could not be changed, even though F.I.C.A. tax was no longer required to be paid by petitioner for the balance of the year.

5. Petitioner averred that he entered into a verbal agreement with his employer that for the balance of the year where no F.I.C.A. tax was required to be paid, that the \$20.48 weekly deduction for said F.I.C.A. tax be divided, with \$10.48 being applied to Federal withholding tax and the balance of \$10.00 being applied to New York State withholding tax. Petitioner contended that since 13 pay weeks remained in the year 1974, an additional \$130.00 was withheld from his wages for New York State withholding tax purposes.

6. Petitioner Stephen P. Teitelbaum testified that he received a wage and tax statement from his employer Hoberman, Miller & Co., P.C. which reflected New York State tax withheld of \$516.36 (\$9.93 x 52) and that he did not attach said wage and tax statement to his return since, in his opinion, the New York State tax withheld was incorrectly stated. Petitioner attempted to procure a corrected wage and tax statement from his employer, reflecting the alledged additional \$130.00 of New York State tax withheld, but was unable to do so. Petitioner left the employ of Hoberman, Miller & Co., P.C. in January 1975 under adverse circumstances and he asserts that this is the reason why he was unable to obtain a corrected wage and tax statement.

CONCLUSIONS OF LAW

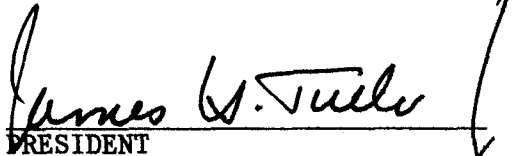
A. That petitioners have failed to sustain their burden of proof imposed by section 689(e) of the Tax Law to show that \$646.36, and not \$516.36, of New York State tax was withheld from petitioner Stephen P. Teitelbaum's wages.

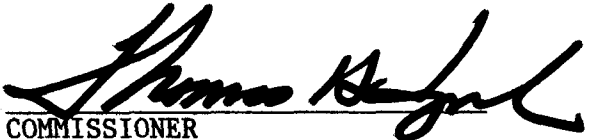
B. That the petition of Stephen P. Teitelbaum and Barbara S. Teitelbaum is denied and the Notice of Deficiency issued December 19, 1977 is sustained.

DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER