

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frederick & Shirley Feldman :

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 Years :
1974 & 1975. :

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Frederick & Shirley Feldman, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frederick & Shirley Feldman
0-19 30th St.
Fair Lawn, NJ 07410

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
18th day of June, 1982.

Carrie A. Haglund

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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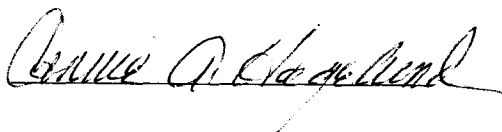
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1982, he served the within notice of Decision by certified mail upon Simon Present the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

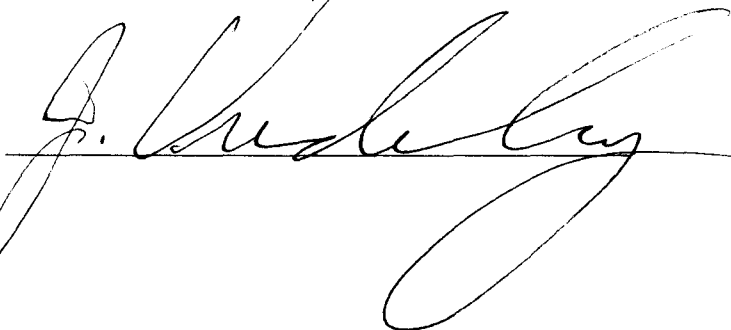
Simon Present
Stein, Simpson, Rosen & Ohrenstein
1370 Avenue of the Americas
New York, NY 10019

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
18th day of June, 1982.





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

June 18, 1982

Frederick & Shirley Feldman
0-19 30th St.
Fair Lawn, NJ 07410

Dear Mr. & Mrs. Feldman:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Simon Present
Stein, Simpson, Rosen & Ohrenstein
1370 Avenue of the Americas
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
FREDERICK and SHIRLEY FELDMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1974 and 1975.

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DECISION

Petitioners, Frederick and Shirley Feldman, 0-19 30th Street, Fair Lawn, New Jersey 07410, 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 1974 and 1975 (File No. 22635).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on Wednesday, July 22, 1981 at 1:20 P.M. Petitioners appeared by Stein Simpson Rosen & Ohrenstein (Simon Present, Esq. of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the consent form signed by petitioners and a representative of the Department of Taxation and Finance rendered the assessment of a deficiency for the year 1974 untimely.

FINDINGS OF FACT

1. Petitioners, Frederick and Shirley Feldman, timely filed joint New York State income tax nonresident returns for the years 1974 and 1975.
2. On November 12, 1976 the Audit Division sent petitioners a consent form encaptioned Consent Fixing Period of Limitation Upon Assessment of Personal

Income and Unincorporated Business Taxes. The letter to petitioners accompanying these forms stated in reference to the 1973 and 1974 New York State income tax nonresident returns that "[i]t is desirable that audit of the above returns be deferred until a decision is issued for the years 1967, 1968 and 1969 now under consideration by the State Tax Commission." This letter then requested petitioners to sign and return the enclosed consent forms.

3. On November 15, 1976 petitioners signed the consent form which stated in part:

"That the amount of any personal income taxes, or of any unincorporated business taxes, due under any return (or returns) made by or on behalf of the above-named taxpayer (taxpayers) for the taxable year (or years) ended December 31, 1973 and 1974, under the Tax Law, may be assessed at any time on or before one year following close of proceedings now pending for the tax years 1967, 1968 and 1969 except that if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by certified mail or registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter."

4. The consent form signed by petitioners stated at the bottom of the page "[s]ee...Section 683(c)(2) (applicable to Articles 22 and 23) of the Tax Law for the statutory provisions regarding extension of the period of limitation by consent or agreement."

5. On November 30, 1976 the Audit Division sent petitioners an executed copy of the consent form. The letter accompanying the consent form stated, in part:

"We are enclosing a properly executed copy of the above consent form which extends the statute of limitations on the income tax return(s) for the taxable year(s) indicated."

6. On February 16, 1977 a hearing was held on the 1967, 1968 and 1969 tax years. In the course of the hearing, petitioners' representative applied for leave to withdraw the petition, for an abatement of penalties, and for a

reduction of interest to the minimum legal rate. Petitioners' application was granted by the Hearing Officer.

7. In a letter dated March 10, 1977 petitioners' representative was advised, inter alia, that their liability was as follows:

"Frederick and Shirley Feldman

	<u>1967</u>	<u>1968</u>	<u>1969</u>
Personal Income Tax Due	\$635.00	\$1,214.63	\$1,335.40
Interest Due	<u>339.73</u>	<u>576.95</u>	<u>554.19</u>
Total Due	\$974.73	\$1,791.58	\$1,889.59"

Petitioners' representative was also told that if payment was made within thirty days additional charges would not accrue.

8. In an enclosure to a letter dated April 7, 1977 petitioners submitted a check of \$500.00 in partial payment of the amount due. This letter requested that a representative call to arrange installment payments. No other evidence was presented regarding petitioners' payment of the amount due for the years 1967, 1968 and 1969.

9. On April 14, 1978 the Audit Division issued a Notice of Deficiency along with an explanatory Statement of Audit Changes which, inter alia, increased petitioners' distributive share of New York partnership income for the fiscal years ended 1974 and 1975. The deficiency asserted for the years 1974 and 1975 was in the amount of \$4,587.13, plus interest of \$1,090.18, for a total of \$5,677.31.

10. The parties stipulated at the hearing that the sole issue was whether the assessment for the year 1974 was timely.

CONCLUSIONS OF LAW

A. That Tax Law §683(c)(2) provides:

"Extension by agreement.-Where, before the expiration of the time prescribed in this section for the assessment of tax, both the

tax commission and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

B. That in view of the correspondence noted in Findings of Fact "2" and "5", as well as the admonition to see Tax Law §683(c)(2) at the bottom of the consent form noted in Finding of Fact "4", it is clear that the consent form was executed to extend rather than restrict the statute of limitations.

C. That since the Notice of Deficiency was issued within three years after the return was filed [Tax Law §683(b)(1)], the assessment of personal income tax for the year 1974 was not barred by the statute of limitations [Tax Law §683(a)].

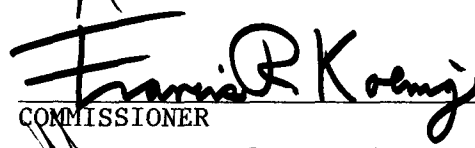
D. That the petition of Frederick and Shirley Feldman is denied and the Notice of Deficiency issued April 14, 1978 is sustained.

DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER