

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Leo & Ruth L. Gitlin :  
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 :  
1968 & 1969. :  
\_\_\_\_\_

State of New York  
County of Albany

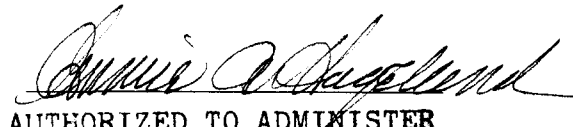
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Leo & Ruth L. Gitlin, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

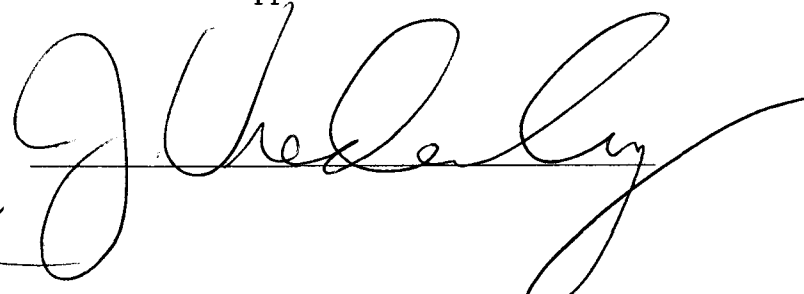
Leo & Ruth L. Gitlin  
10 Hillburn Rd.  
Scarsdale, NY 10583

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  
3rd day of December, 1982.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 3, 1982

Leo & Ruth L. Gitlin  
10 Hillburn Rd.  
Scarsdale, NY 10583

Dear Mr. & Mrs. Gitlin:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
LEO GITLIN and RUTH L. GITLIN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1968 and 1969.	:	

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Petitioners, Leo Gitlin and Ruth L. Gitlin, 10 Hillburn Road, Scarsdale, New York 10583, 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 1968 and 1969 (File No. 29645).

A formal hearing was scheduled to be held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 21, 1982 at 1:15 P.M.; however, on motion duly made without opposition and granted, petitioners advised said Hearing Officer that they desired to waive said hearing and to submit the case to the State Tax Commission based on the entire record contained in the file. Petitioners appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioners are entitled to any relief against penalty and interest where the Department of Taxation and Finance was aware in 1974 of tax deficiencies for years 1968 and 1969 but did not issue a Statement of Audit Changes until 1978 and a Notice of Deficiency until 1979.

FINDINGS OF FACT

1. Petitioners, Leo Gitlin and Ruth L. Gitlin, were the subject of a Federal audit by the Internal Revenue Service for the years 1968 and 1969, which resulted in a determination of additional taxable income for each year. The petitioners failed to notify the Department of Taxation and Finance of the federal changes as required by section 659 of the Tax Law.

2. On July 31, 1978, the Audit Division issued against petitioners a Statement of Audit Changes asserting the following:

"A search of our files fails to show a New York State income tax return filed under your name. Therefore, your New York State income tax liability is computed pursuant to Section 681(a) of the New York State Income Tax Law.

New York taxable income	1968 \$24,929.00	1969 \$34,560.00
Tax on above	\$ 2,050.06	\$ 3,398.40
Less: statutory credit	25.00	25.00
Tax due	\$ 2,025.06	\$ 3,373.40
PERSONAL INCOME TAX DUE		\$5398.46
Section 685(a) penalty @ 25% of \$2025.06 = \$506.27		
Section 685(a)(1) penalty @ 22½% of \$3373.40 = \$759.02		
Section 685(a)(2) penalty @ 25% of \$3373.40 = \$843.35		
Total Penalty		2108.64"

On December 31, 1979, the Audit Division issued a Notice of Deficiency to petitioner based on the Statement of Audit Changes for \$5,398.46 in tax and \$5,933.14 in penalty and interest.

3. Petitioners assert that they had timely filed their 1968 and 1969 New York State income tax returns, and that they had paid the taxes due as well, but because of the passing of time they were unable to produce proof.

4. Subsequent to a conference held January 12, 1981, the petitioners, not being able to sustain that they in fact had paid the taxes in issue, executed a

Partial Withdrawal of Petition and Discontinuance of Case, dated March 4, 1981, whereby said petitioners agreed to and paid the amount of the asserted tax but disagreed as to the inclusion of penalty and interest. Accordingly, the only item remaining in issue is the demand to cancel the penalty and interest.

5. Petitioners base their demand on the doctrine of laches, as they assert the Audit Division was aware of the results of the Federal audit in 1974 but did not issue the Statement of Audit Changes until July 31, 1978, thereby resulting in penalties and excessive accumulated interest.

#### CONCLUSIONS OF LAW

A. That, pursuant to subdivisions (a), (a)(1) and (a)(2) of section 685 of the Tax Law, upon the failure to file a tax return and to pay the amount of tax due, there shall be added to the amount required to be shown as tax an additional amount, unless it is shown that such failure is due to reasonable cause.<sup>1</sup> Petitioners have not established that reasonable cause existed for their failure to file returns or pay the tax due.

B. That section 684 of the Tax Law provides that "(i)f any amount of income tax is not paid on or before the last date prescribed in this article for payment, interest on such amount... shall be paid for the period from such last date to the date paid...".

C. That there is no provision in Article 22 of the Tax Law which allows for the waiving of interest.

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<sup>1</sup> Ch. 1005 Laws of 1970 relettered (a) to (a)(1) and added (a)(2) applicable to returns required to be filed after December 31, 1969.

D. That the State of New York may not be estopped from collecting taxes lawfully imposed and remaining unpaid; accordingly, laches does not apply.

(McMahan v. State Tax Comm., 45 A.D. 2d 624.)

E. That the petition herein is denied and that the Notice of Deficiency is sustained.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER