

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leopold & Ruth Perry :

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 :
1973. :

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 Leopold & Ruth Perry, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leopold & Ruth Perry
2071 E. 56th St.
Brooklyn, NY 11234

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.

James A. Haglund

J. Vredenburg

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

June 18, 1982

Leopold & Ruth Perry
2071 E. 56th St.
Brooklyn, NY 11234

Dear Mr. & Mrs. Perry:

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

In the Matter of the Petition	:	
of	:	
LEOPOLD PERRY and RUTH PERRY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioners, Leopold Perry and Ruth Perry, 2071 East 56th Street, Brooklyn, New York 11234, 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 1973 (File No. 26157).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 7, 1981 at 9:15 A.M. Petitioner Leopold Perry appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioners' claim for refund was timely filed.

FINDINGS OF FACT

1. On January 23, 1979 petitioners' amended New York State Combined Income Tax Return for the year 1973 was received in conjunction with a claim for refund of personal income tax, for IT-113X, whereon a refund of \$113.40 was claimed. Said claim was filed on the basis of federal changes made resulting from petitioners' filing an amended federal return whereon they claimed, and were ultimately allowed, a sick pay exclusion of \$2,534.04. Said adjustment resulted in an overpayment of federal income taxes as evidenced by the notice

of adjustment issued by the Internal Revenue Service to the petitioners under the date of September 20, 1976.

2. On March 16, 1979, the Audit Division issued a statement to the petitioners wherein it gave notice that their claimed refund was denied since such claim "was not timely". Accordingly, on April 30, 1979 the Audit Division issued a formal notice of disallowance to the petitioners.

3. Petitioners argued that they should properly be granted a refund for the year at issue, regardless of whether their claim was timely, since refunds were issued for taxable years 1974 and 1975 with respect to identical issues although the claims filed for said years were untimely filed.

4. Petitioners' claim for refund was not filed within two years ninety days after the final determination of the federal change.

CONCLUSIONS OF LAW

A. That if the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall report such change or correction within ninety days after the final determination of such change or correction pursuant to the meaning and intent of section 659 of the Tax Law.

B. That section 687(c) of the Tax Law provides in, pertinent part, that:

"If a taxpayer is required by section six hundred fifty-nine to report a change or correction in federal taxable income, or federal items of tax preference reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the tax commission, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the tax commission."

C. That since petitioners herein filed the claim for refund at issue later than two years ninety days after the final determination of the federal change, said claim for refund is deemed untimely filed pursuant to the provisions of section 687(c) of the Tax Law. Accordingly, no refund is authorized.

D. That the petition of Leopold Perry and Ruth Perry is denied and the formal notice of disallowance of petitioners' claim dated April 30, 1979 is hereby sustained.

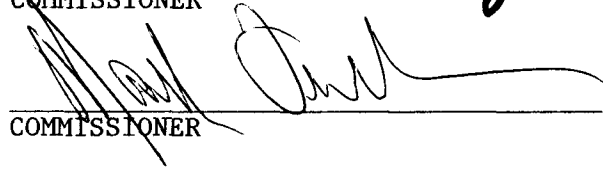
DATED: Albany, New York

JUN 18 1982

STATE OF NEW YORK


PRESIDENT


COMMISSIONER


COMMISSIONER