

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Susan Cohen : 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 :
1976.

State of New York
County of Albany

David Parchuck, 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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Susan Cohen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Susan Cohen
2 Mitchell Ln.
Hanover, NH 03755

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
11th day of February, 1983.

David Parchuck

James A. Hugelland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 11, 1983

Susan Cohen
2 Mitchell Ln.
Hanover, NH 03755

Dear Ms. Cohen:

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	:	
SUSAN COHEN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976.	:	

Petitioner, Susan Cohen, 2 Mitchell Lane, Hanover, New Hampshire 03755, 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 1976 (File No. 28740).

Petitioner waived a hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the State Tax Commission renders the following decision.

ISSUE

I. Whether petitioner is entitled to a waiver of penalty imposed as a result of her failure to file a declaration of estimated tax.

II. Whether petitioner is entitled to a waiver of interest imposed as a result of her underpayment of tax for the year in issue.

FINDINGS OF FACT

1. On January 4, 1980 the Audit Division issued a Notice of Deficiency for the year 1976 against petitioner, Susan Cohen, for personal income tax in the amount of \$1,538.74 plus penalty and interest of \$782.29 for a total due of \$2,321.03. A Statement of Audit Changes issued January 2, 1980 explained that the above mentioned penalty was being imposed under section 685(c) of the Tax Law because petitioner's prepayments of income tax, either through withholding or estimated tax payments, did not exceed 80 percent of the tax shown on the

return. In addition, the Statement explained that interest was being imposed on the additional tax determined due as stated above (\$1,538.74).

2. On January 11, 1980 petitioner paid the tax due of \$1,538.74, but did not pay the penalty and/or interest as she maintained that she had reasonable cause for failing to file a declaration of estimated tax and failing to pay the full amount of the tax due when the return was filed.

3. Sometime during 1976 petitioner received a condemnation award for property she owned in Rockland County, New York.¹ The award resulted in a capital gain addition to petitioner's 1976 New York taxable income which petitioner reported on her 1976 New York return.² Petitioner did not, however, make any estimated tax payments as a result of the additional income received from the award.

4. Petitioner explained by letter that upon receipt of the award she went to her accountant in New Hampshire, where petitioner resided, for advice as to her potential tax liability. The accountant advised her as to her Federal and New Hampshire tax liabilities but was apparently unfamiliar with New York Tax Law and failed to advise petitioner that she was required to make estimated tax payments.

5. Petitioner maintains that since she had no intent to evade the tax and only failed to make the estimated payments due to a lack of advice from her accountant, she is entitled to a waiver of the penalty imposed under section 685(c) of the Tax Law. Petitioner also maintains, by the same reasoning, that no interest should be imposed on the underpayment of the tax and thus, said interest should be waived.

¹ Petitioner was unsure of the actual date of the condemnation award and presented no documentation indicating a precise date.

² The tax was adjusted as a result of petitioner not making the 20 percent New York State Capital Gains modification. The tax is not in dispute herein.

CONCLUSIONS OF LAW

A. That section 685(c) of the Tax Law imposes an addition to tax for underpayment of estimated tax if any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax.

B. That the aforesaid statute makes no provision for waiver of the addition to tax for reasonable cause. Therefore, in spite of petitioner's lack of intent to evade the tax and reliance on her accountant's advice, no waiver authority exists to which petitioner would be entitled.

C. That section 684(a) of the Tax Law provides for payment of interest on any amount of income tax which is not paid on or before the last date prescribed for payment under Article 22 of the Tax Law. There is no provision for waiver of said interest for any reason. Therefore the interest charged on petitioner's tax deficiency cannot be waived despite the existence of any reasonable cause for late payment.

D. That the petition of Susan Cohen is denied and the Notice of Deficiency issued January 4, 1980 is sustained.

DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER