

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
David R. & Donna J. Gass

: 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 1977.

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon David R. & Donna J. Gass, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David R. & Donna J. Gass  
12004 Greenleaf Dr.  
Huntsville, AL 35803

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  
6th day of May, 1983.

David Parchuck

Annice A. Hagedorn

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

May 6, 1983

David R. & Donna J. Gass  
12004 Greenleaf Dr.  
Huntsville, AL 35803

Dear Mr. & Mrs. Gass:

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	:	
DAVID R. GASS and DONNA J. GASS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

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Petitioners, David R. Gass and Donna J. Gass, 12004 Greenleaf Drive, Huntsville, Alabama 35803, 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 1977 (File No. 28383).

On August 25, 1982 petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and submit the case to the State Tax Commission so that a decision could be based upon the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether interest should be assessed against petitioners from the due date of their return through twenty days after receipt of petitioners' revised tax computation or rather through the date of payment of said revised tax computation.

FINDINGS OF FACT

1. Petitioners, David R. Gass and Donna J. Gass, timely filed a joint New York State Income Tax Resident Return for 1977. Petitioner David R. Gass did not report on this return any income resulting from purchases of stock under his employer's stock purchasing plan.

2. On April 11, 1979, the Audit Division issued a Statement of Audit Changes reflecting additional tax due for 1977 in the amount of \$714.14 plus interest of \$60.03, along with an explanation that stock option income of \$6,118.00 would be taxable on petitioners' New York State return for 1977. On May 3, 1979, petitioners protested the Statement of Audit Changes issued April 11, 1979. They asserted that their 1977 New York State income tax return (perhaps) should have reflected the value of the stock option at the time they received the stock. Therefore, petitioners recomputed their tax for 1977 as follows:

Average Market Value of Stock Received	\$ 25.50
Cost of Stock to the Petitioner	11.66
Stock Option Income per Share	<u>\$ 13.84</u>
Number of Shares Received	200
Stock Option Income	<u>\$ 2,768.00</u>
New York State Income per Original Return	16,293.28
Corrected Income	<u><u>\$19,061.28</u></u>
Tax Per Schedule	\$ 1,287.35
Income Tax Previously Stated	989.33
Additional Personal Income Tax Due	<u><u>\$ 298.02</u></u>

The Audit Division did not accept petitioners' recomputation of additional tax due for 1977. On August 31, 1979, a Notice of Deficiency was issued to petitioners for 1977 asserting additional tax due in the amount of \$714.14. Petitioners filed a petition for redetermination of this deficiency on November 1, 1979.

3. The Audit Division subsequently accepted petitioners' revised computation of the additional tax due for 1977. The tax due, as stated on the Notice of Deficiency, was revised to \$298.02, plus interest (computed to April 23, 1982) of \$113.06. On May 10, 1982, petitioners sent a check in the amount of \$326.00, in payment of the \$298.02 in taxes, plus \$27.98 in interest. Petitioners asserted that the interest payments should only cover the period from April 15,

1978 through May 23, 1979; that the date of May 23, 1979 gave the Audit Division twenty (20) days to respond to the petitioners' letter of May 3, 1979, which letter contained petitioners' proposed recomputation of tax. Petitioners assert that the Audit Division's failure to promptly and properly advise them with respect to said proposed recomputation caused undue delay, which in turn resulted in additional accumulated interest being accrued against petitioners in violation of the State Tax Commission's rules.

CONCLUSIONS OF LAW

A. That section 684 of the Tax Law provides that interest be imposed on any amount of income tax not paid on or before the due date of a tax return.

B. That Article 22 of the Tax Law does not provide for the suspension, waiving or abatement of interest properly imposed.

C. That petitioners' assertion is tantamount to a waiver on the ground of laches. This is denied on the authority of Matter of Jamestown Lodge 1681 Loyal Order of Moose, Inc. (Catherwood), 31 A.D.2d 981, where it is said that "Laches, waiver or estoppel may not be imputed to the State in the absence of statutory authority.... This rule is generally applied in connection with tax matters...."

D. That the petition of David R. Gass and Donna J. Gass is denied and the Notice of Deficiency issued August 31, 1979, as revised on January 29, 1982, with its payments of \$326.00 is sustained together with such additional interest as now may be lawfully owing.

DATED: Albany, New York

**MAY 06 1983**

STATE TAX COMMISSION

Rodriguez  
PRESIDENT

Francis D. Koenig  
COMMISSIONER

[Signature]  
COMMISSIONER