

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

James M. Jones

:

:

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 and Chapter 46,:
Title T of the Administrative Code of the City of :
New York for the Year 1977. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of June, 1983, she served the within notice of Decision by certified mail upon James M. Jones, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James M. Jones
1204 Noble Ave.
Bronx, NY 10472

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
29th day of June, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

June 29, 1983

James M. Jones
1204 Noble Ave.
Bronx, NY 10472

Dear Mr. Jones:

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 Law 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
Building #9 State Campus
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	:	
JAMES M. JONES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Year 1977.	:	

Petitioner, James M. Jones, 1204 Noble Avenue, Bronx, New York 10472, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 33837).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 10, 1983 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUES

I. Whether \$2,041.00 of Federal income tax paid by petitioner on his 1977 U.S. Individual Income Tax Return constitutes a proper itemized deduction for New York State and New York City income tax purposes.

II. Whether the Audit Division's disallowance of petitioner's claimed deduction for Federal income taxes constitutes a form of double taxation and violates petitioner's constitutional rights.

FINDINGS OF FACT

1. Petitioner herein, James M. Jones, timely filed a New York State and New York City income tax resident return for the year 1977 on April 3, 1978. On said return petitioner reported in total New York State and New York City income "state and local income tax refunds" of \$623.89. Petitioner included in total New York State and New York City itemized deductions the sum of \$2,041.00, said amount representing the Federal income tax paid on petitioner's 1977 Federal income tax return.

2. On January 22, 1981, the Audit Division issued a Notice of Deficiency to petitioner asserting that \$205.83 of additional New York State and New York City personal income tax was due for the year 1977. The aforementioned deficiency was premised on the Audit Division's disallowance of petitioner's claimed deduction of Federal income taxes in the amount of \$2,041.00.

3. It is petitioner's position that there is no law or statute which expressly prohibits a taxpayer from claiming Federal income taxes as a deduction on his New York State and New York City income tax return and, therefore, there is no basis for the Audit Division's disallowance of said deduction.

4. Petitioner also argued that for New York State and New York City to levy a tax on the tax he paid to the United States government constituted a form of double taxation, thereby violating his constitutional rights.

CONCLUSIONS OF LAW

A. That the New York State and New York City itemized deductions of a resident individual are the same as his Federal itemized deductions, subject to certain modifications [Tax Law section 615(a) and section T46-115.0(a) of Chapter 46, Title T of the Administrative Code of the City of New York, respectively].

B. That there are no provisions in the New York State or New York City Tax Law which permits a taxpayer to increase his Federal itemized deductions by the amount of Federal income tax paid during the year [section 615(d) of the Tax Law for State purposes and section T46-115.0(d) of Title T for City purposes].

C. That section 164 of the Internal Revenue Code of 1954 provides for those taxes which are includible in Federal itemized deductions. Section 164(a)(3) of the Internal Revenue Code permits state and local income taxes to be included in Federal itemized deductions. Furthermore, section 275 of the Internal Revenue Code and Treasury Regulation section 1.164-2(a) specifically deny a deduction for certain taxes including a deduction for federal income taxes withheld at source on wages. Since there is no provision in the Internal Revenue Code or New York State or New York City Tax Law which allows petitioner to deduct his Federal income tax paid for 1977, said claimed deduction has been properly disallowed by the Audit Division.

D. That the constitutionality of the laws of the United States of America, New York State and New York City is presumed by the State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional; therefore, it must be presumed that the relevant sections of the law are constitutional to the extent that they relate to the imposition of the income tax liability on petitioner.

E. That state and local income tax refunds are not includible in the New York State and New York City adjusted gross incomes of a resident individual [Tax Law section 612(c)(7) and section T46-112.0(c)(7) of Title T]. That petitioner has incorrectly included \$623.89 of state and local income tax refunds in his 1977 New York State and New York City adjusted gross incomes.

Accordingly, said amount is to be deleted from the computation of the aforementioned adjusted gross incomes.

F. That the petition of James M. Jones is granted to the extent indicated in Conclusion of Law "E", supra, and that, except as so granted, the petition is in all other respects denied.

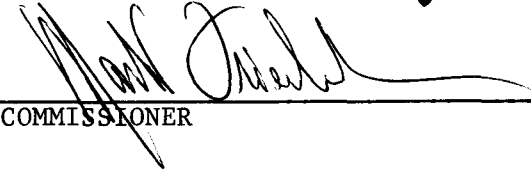
DATED: Albany, New York

STATE TAX COMMISSION

JUN 29 1983


PRESIDENT


COMMISSIONER


COMMISSIONER