

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Emory L. Arney : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income Tax :
under Article 22 of the Tax Law for the Years 1973 :
& 1974.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Emory L. Arney, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Emory L. Arney
4 Livingston St.
Valhalla, NY 10595

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of March, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

March 9, 1984

Emory L. Arney
4 Livingston St.
Valhalla, NY 10595

Dear Mr. Arney:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EMORY L. ARNEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1973 and 1974.	:	

Petitioner, Emory L. Arney, 4 Livingston Street, Valhalla, New York 10595, 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 1973 and 1974 (File No. 31610).

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 June 21, 1983 at 9:15 A.M., with all briefs to be submitted by July 21, 1983. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

- I. Whether incorporating Federal audit changes into the computation of petitioner's New York State tax liability was proper.
- II. Whether petitioner is entitled to a resident tax credit.

FINDINGS OF FACT

1. Emory L. Arney (hereinafter petitioner) failed to file New York State personal income tax returns for the years 1973 and 1974.
2. On January 16, 1980, the Audit Division issued a Statement of Audit Changes to petitioner wherein his total New York income for each year at issue was computed from his Federal returns as adjusted by Federal audit changes of

June 15, 1976 (1973) and December 16, 1976 (1974). Accordingly, a Notice of Deficiency was issued against petitioner on April 14, 1980 asserting personal income tax of \$778.56, plus penalties and interest of \$705.59, for a total due of \$1,484.15. Said penalties were asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file 1973 and 1974 returns and failure to pay the tax determined to be due, respectively.

3. The Federal audit changes incorporated into the computation of petitioner's New York State personal income tax liability were as follows:

<u>1973</u>	<u>Amount Shown On Return</u>	<u>Corrected Amount</u>	<u>Adjustment</u>
Loss	\$ 4,500.00	\$ -0-	\$4,500.00
Business expenses	10,795.00	8,607.00	2,188.00
Standard deduction	1,000.00	715.00	285.00.
 <u>1974</u>			
Loss	4,500.00	-0-	4,500.00
Business expenses	13,527.00	8,607.00	4,920.00
Standard deduction	248.00	1,000.00	(752.00)

4. In protesting the deficiency at issue, petitioner initially argued that he was a resident of Pennsylvania. However, during the hearing held herein, he conceded that he was a New York State resident during 1973 and 1974.

5. Petitioner filed a Federal claim for refund for each year at issue on September 22, 1978. Based on such claims, he contended that the aforestated Federal audit changes were subsequently cancelled. Although he was granted sufficient time subsequent to the hearing to support such contention, he failed to do so.

6. Petitioner contended that he is entitled to a net operating loss carryforward of \$3,000.00 for 1973 and 1974 based on a loss sustained in 1971; however, no evidence was submitted to support such contention.

7. Petitioner did not file New York State returns for 1973 and 1974 based on his belief that he was a Pennsylvania resident. He assumed that since he was employed in Pennsylvania, he was not required to file New York State returns.

8. Petitioner did not file a Pennsylvania State income tax return for either year at issue. The record shows no indication that Pennsylvania taxes were withheld from petitioner's wages.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that the Federal audit changes incorporated into the computation of his New York State personal income tax liability had been subsequently modified or cancelled by the Internal Revenue Service. Accordingly, such audit changes are deemed properly applicable in computing petitioner's New York State tax liability.

B. That section 620(a) of the Tax Law provides that:

"A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state or by the District of Columbia, upon income both derived therefrom and subject to tax under this article."

C. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that he had paid income tax to the State of Pennsylvania during the years at issue. Accordingly, he is not entitled to a resident tax credit within the meaning and intent of section 620(a) of the Tax Law.

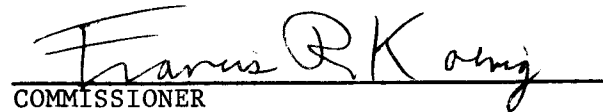
D. That the petition of Emory L. Arney is denied and the Notice of Deficiency issued April 14, 1980 is sustained, together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER