

## STATE TAX COMMISSION

In the Matter of the Petition  
of  
Jose Batista  
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.

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

Jose Batista  
47 Fort Washington Ave. #45  
New York, NY 10032

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.

David Paruch

James A. Boyd  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 20, 1984

Jose Batista  
47 Fort Washington Ave. #45  
New York, NY 10032

Dear Mr. Batista:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, 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

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|--|---|----------|
| In the Matter of the Petition                  | : |          |
| of   | : |          |
| JOSE BATISTA                                   | : | DECISION |
| 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.                 | : |          |

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Petitioner, Jose Batista, 47 Fort Washington Avenue, Apt. #45, New York, New York 10032, 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. 32965).

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 May 11, 1983, at 2:45 P.M. with all briefs to be submitted by July 4, 1983. Petitioner appeared with Reuben Ulloa, who acted as a translator. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is properly entitled to a resident tax credit.

FINDINGS OF FACT

1. Jose Batista (hereinafter petitioner) did not file a New York State or New York City personal income tax return for the year 1977.

2. On September 2, 1980, the Audit Division issued a Statement of Audit Changes to petitioner whereon his New York State and New York City tax liabilities were computed from information obtained from the Internal Revenue Service. Accordingly, a Notice of Deficiency was issued against petitioner on December 11, 1980 asserting New York State personal income tax of \$568.24, New York City personal income tax of \$225.28, plus penalties and interest of \$503.04, for a total due of \$1,296.56. New York State penalties were asserted pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file a return and failure to pay the tax determined to be due respectively. New York City penalties, which are identical in nature and rates to said State penalties, were asserted pursuant to sections T46-185.0(a)(1) and T46-185.0(a)(2) of Chapter 46 Title T of the Administrative Code of the City of New York.

3. Petitioner, a resident of New York, contended that he is properly entitled to a New York State resident tax credit for income taxes paid to the State of New Jersey.

4. Pursuant to a New York State Income Tax Bureau Federal/State Tape Match card, petitioner's 1977 Federal adjusted gross income was \$18,153.00. His Wage and Tax Statement introduced at the hearing shows that said amount represented wages derived exclusively from employment with Ford Motor Co. in New Jersey. New Jersey Emergency Transportation Tax of \$811.07 was withheld from said wages.

5. Subsequent to the hearing petitioner submitted a certified copy of his 1977 New Jersey Nonresident Return which he had obtained from the New Jersey Division of Taxation. Submitted therewith were copies of two wage and tax statements for 1977 issued by Ford Motor Co. One such copy was identical to that previously introduced (see Finding of Fact "4" supra). The second copy

shows that petitioner received additional wages during 1977 of \$320.79 from which New Jersey Emergency Transportation Tax of \$2.86 was withheld.

6. Review of petitioner's New Jersey Nonresident Return indicates that several errors were made in the computation of tax, which apparently were subsequently corrected by the New Jersey tax authorities. Although the subsequent corrections are not part of the record herein, petitioner's proper New Jersey tax payable for 1977 can readily be determined from the existing record as follows:

|                                  |                  |
|----------------------------------|------------------|
| Total New Jersey Income Reported | \$18,474.00      |
| Less: Standard deduction         | 2,000.00         |
| Balance                          | \$16,474.00      |
| Less: Exemptions                 | 4,550.00         |
| New Jersey Taxable Income        | \$11,924.00      |
| Tax Payable                      | <u>\$ 593.92</u> |

#### CONCLUSIONS OF LAW

A. That petitioner's total New York State income is increased to \$18,474.00 based on the additional wages disclosed of \$320.79. Accordingly, his New York State tax liability is recomputed to be \$593.92.

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 20NYCRR 121.3(c) provides that:

"The tax of the other jurisdiction means the total tax payable thereto for the taxable year, exclusive of any interest or penalties."

D. That petitioner is properly entitled to a New York State Resident Tax Credit of \$593.92 within the meaning and intent of section 620(a) of the Tax Law. Since the Resident Tax Credit allowable offsets petitioner's New York

State tax liability as recomputed, no tax liability remains for New York State purposes. Accordingly, the penalties asserted under sections 685(a)(1) and 685(a)(2) of the Tax Law are cancelled.

E. That petitioner's total New York City income is increased to \$18,474.00 based on the additional wages disclosed of \$320.79. Accordingly, his New York City tax liability is recomputed to be \$233.95.

F. That there are no provisions in Chapter 46, Title T of the Administrative Code of the City of New York to allow for a Resident Tax Credit for New York City purposes.

G. That the petition of Jose Batista is granted to the extent provided in Conclusions of Law "D" supra, and except as so granted, said petition is, in all other respects, denied.

H. That the Audit Division is hereby directed to amend the Notice of Deficiency dated December 11, 1980 to be consistent with the decision rendered herein.

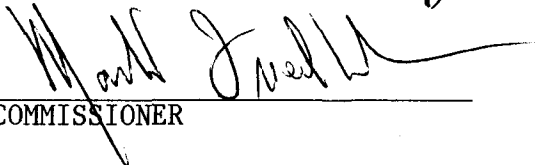
DATED: Albany, New York

STATE TAX COMMISSION

JAN 20 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER