

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Lawrence Coopersmith :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income Tax under Article :  
22 of the Tax Law for the Years 1976, 1977 and :  
1978 and New York City Personal Income Tax under :  
Article 30 of the Tax Law for the Year 1976 and :  
Chapter 46, Title T of the Administrative Code of :  
the City of New York for the Years 1977 and 1978. :

State of New York }

ss.:

County of Albany }

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 31st day of July, 1984, he served the within notice of Decision by certified mail upon Lawrence Coopersmith, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence Coopersmith  
P.O. Box 21 - Murray Hill Station  
New York, NY 10016

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  
31st day of July, 1984.

David Parchuck

James A. Hagan  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 31, 1984

Lawrence Coopersmith  
P.O. Box 21 - Murray Hill Station  
New York, NY 10016

Dear Mr. Coopersmith:

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	:	
LAWRENCE COOPERSMITH	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law for the Years	:	
1976, 1977 and 1978 and New York City Personal	:	
Income Tax under Article 30 of the Tax Law	:	
for the Year 1976 and Chapter 46, Title T of	:	
the Administrative Code of the City of New York	:	
for the Years 1977 and 1978.	:	

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Petitioner, Lawrence Coopersmith, P.O. Box 21 - Murray Hill Station, New York, New York 10016, 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 for the years 1976, 1977 and 1978 and New York City personal income tax under Article 30 of the Tax Law for the year 1976 and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1977 and 1978 (File No. 38285).

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 December 16, 1983 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel).

ISSUES

I. Whether the deficiencies asserted, based primarily on petitioners failure to pay the balances due as shown on his returns, are properly due and owing.

II. Whether petitioner is liable for penalties and interest asserted as a result of the late filing of his returns and nonpayment of the balances of tax due pursuant to such returns.

FINDINGS OF FACT

1. On March 5, 1981, Lawrence Coopersmith (hereinafter petitioner) late filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) for each of the years 1976, 1977 and 1978. The return for 1976 was filed on a 1977 form. Each of said returns reported a balance due New York State and New York City as follows:

<u>Year</u>	<u>Due New York State</u>	<u>Due New York City</u>	<u>Total Balance Due</u>
1976	\$ 510.77	\$ 201.22	\$ 711.99
1977	68.00	45.00	113.00
1978	186.00	87.00	273.00

The aforestated balances due were not paid by petitioner.

On said date petitioner also late filed a New York State Income Tax Return for 1979 showing a refund of \$51.00.

2. On August 7, 1981 the Audit Division issued a Statement of Audit Changes to petitioner wherein New York State and New York City personal income taxes were asserted for the unpaid balances due per petitioner's returns. Additionally, two adjustments were made for the year 1976 as follows:

(a) The 2½% New York State surcharge, in effect during 1976, was asserted since such surcharge was omitted from petitioner's return as filed.

(b) Petitioner's reported 1976 New York State tax withheld of \$1,613.23 was reduced by \$118.57 since such amount represented New Jersey Transportation Tax withheld by a New Jersey employer. Alternatively, petitioner was allowed a Resident Tax Credit of \$17.30, the amount of tax payable to New Jersey had he filed a return with said State.

Pursuant to the Statement of Audit Changes, the refund due petitioner for taxable year 1979 of \$51.00 was applied to the deficiency computed for the years at issue herein.

3. Based on said Statement of Audit Changes, two notices of deficiency were issued against petitioner on June 23, 1982. One such notice asserted New York State and New York City personal income taxes of \$928.00 for the years 1976 and 1977, penalties of \$424.18, plus interest of \$452.67, for a total due of \$1,804.85. The second notice asserted New York State and New York City personal income taxes of \$273.00 for the year 1978, penalties of \$98.29, plus interest of \$85.76, for a total due of \$457.05. Said penalties were asserted for New York State and New York City purposes for failure to timely file the returns at issue and failure to pay the taxes determined to be due respectively.

4. Petitioner alleged that his 1972, 1973, 1974 and 1975 Federal returns were audited by the Internal Revenue Service. Although the returns audited by the Internal Revenue Service were for years prior to those at issue herein, petitioner claimed that he didn't pay the deficiency at issue because he "cannot pass money to State until I settle up with Federal first." He stated "that's the way I handle my money." Petitioner further claimed "I cannot close with you until I get finished with I.R.S." and that "since I.R.S. is constantly changing everything you will have to wait until I get settled up with them."

5. Petitioner's Federal returns were not audited for the years at issue herein.

6. With respect to the penalties asserted, petitioner claimed "the penalties do not belong to me because the I.R.S. refused to settle my tax account and thereby it was their fault that your payment was detained." Petitioner also objected to the interest charge based on the same argument.

7. Petitioner's aforestated arguments, as quoted, constituted his entire basis for disagreement with the deficiencies asserted herein.

CONCLUSIONS OF LAW

A. That petitioner's dispute with the Internal Revenue Service with respect to his Federal liabilities for the years 1972, 1973, 1974 and 1975 is not relevant to the New York State and New York City liabilities at issue herein for the years 1976, 1977 and 1978.

B. That pursuant to section 651(a)(1)(A) of Article 22, section 1306(a) of Article 30 and section T46-151.0(a) of the Administrative Code of the City of New York, petitioner was required to file his New York State and New York City personal income tax returns on or before the fifteenth day of the fourth month following the close of each taxable year at issue herein.

C. That section 652 of Article 22 of the Tax Law, section 1312(a) of Article 30 of the Tax Law (incorporating section 652) and section T46-152.0 of the Administrative Code of the City of New York provide that a person required to make and file a return under this article/part shall, without assessment, notice or demand, pay any tax due thereon to the tax commission on or before the date fixed for filing such return.

D. That pursuant to sections 685(a)(1) and 685(a)(2) of Article 22, section 1312(a) of Article 30 (incorporating sections 685(a)(1) and 685(a)(2) of Article 22) and sections T46-185.0(a)(1) and T46-185.0(a)(2) of the Administrative Code of the City of New York, penalties are imposed in case of failure to file a tax return on or before the prescribed date and in case of failure to pay the amounts shown as tax on any return required to be filed on or before the prescribed date respectively, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

E. That interest is due and owing on the amounts of New York State and New York City income tax not paid on or before the last date prescribed, pursuant to section 684(a) of Article 22, section 1312(a) of Article 30 (incorporating section 684(a)) and section T46-184.0(a) of the Administrative Code of the City of New York.

F. That petitioner has failed to show reasonable cause in his late filing of the returns at issue and his nonpayment of the taxes determined to be due thereon. There is no provision in Article 22 or Article 30 of the Tax Law or Chapter 46, Title T of the Administrative Code of the City of New York for the abatement or waiving of interest properly due.

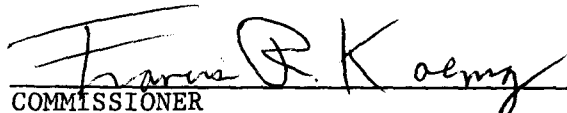
F. That the petition of Lawrence Coopersmith is denied and the two notices of deficiency, each dated June 23, 1982, are sustained together with such additional penalties and interest as may be lawfully owing.

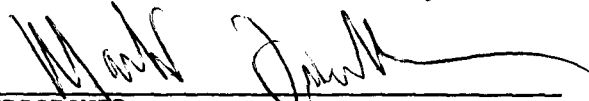
DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER