

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

William J. & Ingeborg Gardner :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of 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 }

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 14th day of December, 1984, he served the within notice of Decision by certified mail upon William J. & Ingeborg Gardner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William J. & Ingeborg Gardner  
149 Marine Ave.  
Brooklyn, NY 11209

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  
14th day of December, 1984.

David Parchuck

James P. Haglund

Authorized to administer oaths  
pursuant to Tax Law section 174

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

December 14, 1984

William J. & Ingeborg Gardner  
149 Marine Ave.  
Brooklyn, NY 11209

Dear Mr. & Mrs. Gardner:

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, 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	:	
	:	
WILLIAM J. GARDNER AND INGEBOG GARDNER	:	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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Petitioners, William J. Gardner and Ingeborg Gardner, 149 Marine Avenue, Brooklyn, New York 11209, 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. 36692).

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 February 10, 1984 at 2:45 P.M., with all briefs to be submitted by March 10, 1984. Petitioner William J. Gardner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

#### ISSUES

I. Whether petitioners filed a New York State personal income tax return for the year 1977.

II. Whether, and if so to what extent, New York State and City personal income taxes were withheld from petitioner William J. Gardner's wages during the year 1977.

FINDINGS OF FACT

1. On September 11, 1980 the Audit Division issued a Statement of Audit Changes to petitioners, William J. and Ingeborg Gardner, wherein their 1977 New York State and City personal income tax liabilities were computed based on federal information since there was no record of petitioners having filed a New York return for said year. In such computation no credit was given for New York State or City personal income taxes withheld.

2. Based on said Statement of Audit Changes, a Notice of Deficiency was issued against petitioners on July 23, 1981 asserting New York State personal income tax of \$840.83, New York City personal income tax of \$314.82, penalties of \$723.09<sup>1</sup> and interest of \$86.85<sup>1</sup> for a total due of \$1,965.59. Said penalties were asserted for New York State purposes pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file the return at issue and failure to pay the tax determined to be due, respectively. For New York City purposes said penalties were asserted pursuant to sections T46-185.0(a)(1) and T46-185.0(a)(2) of the Administrative Code of the City of New York for identical reasons.

3. William J. Gardner contended that he had filed a New York State personal income tax return for 1977, however, no evidence was introduced to support such contention.

4. During 1977 Mr. Gardner was a civilian employee of the United States Department of the Army. His work location was Fort Hamilton in Brooklyn, New York. He argued that he should be given credit for the New York State and City personal income taxes withheld from his compensation during 1977.

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<sup>1</sup> Penalties as reported on the Notice of Deficiency were overstated while interest as reported was understated. However, the total of penalties and interest is correct.

5. On several occasions prior to this hearing the Audit Division had requested that Mr. Gardner submit a copy of his 1977 Wage and Tax Statement so that credit could be given for any State and City taxes withheld during said year. Mr. Gardner claimed that he made an attempt to secure a copy but such attempt proved unsuccessful. Although he was granted sufficient time subsequent to this hearing to secure and submit a 1977 Wage and Tax Statement or similar official document providing the withholding information necessary, he failed to do so.

6. Petitioners filed a New York State return for 1980 whereon they computed a State and City refund due of \$313.00. Said refund due was applied against the New York City portion of the deficiency on August 4, 1981, with April 15, 1981 entered as the payment date.

#### CONCLUSIONS OF LAW

A. That petitioners have failed to sustain their burden of proof, imposed by section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that they filed a New York State return for 1977 or to show that New York State and City taxes were withheld from petitioner William J. Gardner's compensation during 1977. Accordingly, it must be held that petitioners have failed to file a New York State personal income tax return for the year 1977. Furthermore, no credit is allowable for New York State or New York City taxes withheld during 1977.

B. That the tax deficiency asserted of \$1,155.65 is reduced to \$842.65 based on the application of petitioners' 1980 reported refund of \$313.00 to the deficiency at issue herein.


C. That the petition of William J. Gardner and Ingeborg Gardner is granted to the extent provided in Conclusion of Law "B", supra, and except as so granted, said petition is, in all other respects, denied.


D. That the Audit Division is hereby directed to adjust the Notice of Deficiency issued July 23, 1981 to be consistent with the decision rendered herein.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 14 1984

  
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PRESIDENT

  
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COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER