



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

July 31, 1984

William T. & Louise Giannini  
4313 Kepler Ave.  
Bronx, NY 10470

Dear Mr. & Mrs. Giannini:

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 T. GIANNINI AND LOUISE GIANNINI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Year 1976.	:	

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Petitioners, William T. Giannini and Louise Giannini, 4313 Kepler Avenue, Bronx, New York 10470, 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 Article 30 of the Tax Law for the year 1976 (File No. 34017).

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 January 10, 1984 at 1:00 P.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners' claim for refund was timely filed.

FINDINGS OF FACT

1. William T. Giannini and Louise Giannini (hereinafter petitioners) timely filed a joint New York State Income Tax Resident Return (with New York City Personal Income Tax) for the year 1976 whereon they erroneously reported their total New York State income taxes withheld of \$684.00 on the line designated for "State Estimated Tax Paid". The balance due on such return was \$1,900.00.

2. On January 25, 1980 the Audit Division issued a Notice and Demand for Payment of Income Tax Due to petitioners whereon New York State personal income

tax of \$684.00 was shown as due based on the explanation that "Estimated tax payments and/or credits do not agree with your estimated tax account."

3. Subsequent to receipt of said notice and demand, petitioners requested a more detailed explanation of the tax due and copies of their 1976 return and wage and tax statements. Since a response was not received, they then requested a copy of Mrs. Giannini's 1976 Wage and Tax Statement from her employer. Such request was made to allow petitioners to reconcile the State's figures with their own records, which were complete except for the Wage and Tax Statement requested.

4. On May 29, 1980, Mrs. Giannini's employer issued her a copy of her 1976 Wage and Tax Statement.

5. On June 11, 1980, petitioners filed an amended return for 1976 whereon they filed separately. The balance due, as computed on said amended return, was \$865.00. In conjunction therewith, petitioners submitted a letter written by the preparer of said return, wherein it was stated that:

"Mr. & Mrs. Giannini have finally obtained the necessary documentation to complete their amended 1976 tax.

Attached you will find their amended tax for 1976 which entitles them to a refund.

On the original tax filed they in error combined both their incomes instead of splitting them. In addition, they placed \$684 into the State estimated tax column instead of in the State tax withheld column.

They paid the \$1,900 tax due when their liability was only \$865 due.

Would you issue them a refund for \$1,035."

6. The refund requested of \$1,035.00 was for both New York State and New York City personal income taxes, which petitioners claimed to have overpaid on their original return.

7. On January 5, 1981, the Audit Division issued a statement to petitioners wherein they were notified that the notice and demand was cancelled in full.

On the reverse of such statement the following explanation appeared:

"The assessment has been cancelled, as the \$684.00 taxes withheld were mistakenly included in the 'State Estimated Tax Paid' line.

However, we cannot accept your 1976 Amended Return, as it was filed more than three years past the due date of the original 1976 return (April 15, 1977)."

8. On April 15, 1981, the Audit Division issued a formal notice of disallowance to petitioners advising them that their refund claim of \$1,035.00 had been disallowed in full.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law is, by its own terms, tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That with respect to a change of election, in the instant case the change from a joint return to separate returns, 20 NYCRR 154.4(c), as in effect during the year at issue, provided, in pertinent part, that:

"Where the change of election results in an overpayment of tax, the return or amended return required...will be deemed a claim for refund for the purposes of section 687 of the Tax Law, but refund will be allowable only if such return or amended return is filed within the time prescribed by that section...."

C. That section 687(a) of the Tax Law provides in pertinent part that:

"Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later...."

D. That section 687(e) of the Tax Law provides in pertinent part that:

"No credit or refund shall be allowed or made...after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period."


E. That petitioners' claim for refund (amended return) was filed more than three years from the time the original return was filed. Accordingly, since such claim was untimely filed, a refund based on such claim cannot be allowed.

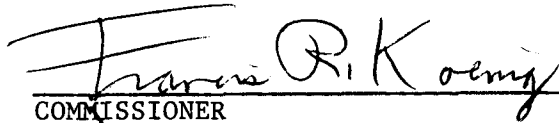
F. That the petition of William T. Giannini and Louise Giannini is denied and the formal notice of disallowance issued April 15, 1981 is sustained.

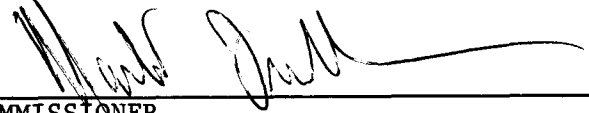
DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER