

STATE TAX COMMISSION

Carrie R. Haglund Authorized to administer oaths
pursuant to Tax Law section 174

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

January 20, 1984

Clarence & Alice Napier
262 Buttonwood Ave.
Peekskill, NY 10566

Dear Mr. & Mrs. Napier:

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	:	
CLARENCE NAPIER and ALICE NAPIER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 and 1976.	:	

Petitioners, Clarence Napier and Alice Napier, 262 Buttonwood Avenue, Peekskill, New York 10566, 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 1975 and 1976 (File No. 29604).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1981 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUES

I. Whether the resident tax credit is limited to New York tax payable, exclusive of the 2½ percent surcharge.

II. Whether disallowance of the resident tax credit against the tax surcharge is illegal.

FINDINGS OF FACT

1. Petitioners, Clarence Napier and Alice Napier, filed joint New York State income tax resident returns for 1975 and 1976. On said returns, the petitioners took a credit for income tax paid to the State of New Jersey. Their computation of the credit took into account the tax surcharge.

2. The Audit Division issued two notices and demand for payment of income tax due. Each notice recomputed the petitioners' taxes and excluded credit against the tax surcharge. The notice issued on April 20, 1978 for 1975 demanded payment of additional personal income tax of \$18.58. The other notice issued on September 7, 1977 for 1976 demanded payment of additional personal income tax of \$21.39.

3. Petitioners contended that the surcharge paid to New York and New Jersey is a duplicate tax and represents discrimination against residents living in New York and working in New Jersey. Petitioners further contended that the law is illegal in that it discriminates against one segment of people who live in New York and work in New Jersey.

CONCLUSIONS OF LAW

A. That the legality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws illegal. Therefore, it must be presumed that the Tax Law is legal to the extent that it relates to the imposition of income tax liability on the petitioners.

B. That section 620 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 section 601-B(a) of the Tax Law provides that "[i]n addition to the taxes imposed by sections six hundred one and six hundred one-A, there is hereby imposed on the income of every individual, estate and trust for the taxable years ending after December thirty-first, nineteen hundred seventy-six,

a tax at the rate of two and one-half per centum of the taxes imposed under sections six hundred one and six hundred one-A, before the deduction of any credits against tax allowable under this article for such year. The credits against tax otherwise allowable under section six hundred six, six hundred twenty, six hundred twenty-one and six hundred forty shall not be allowed as a credit against the tax imposed by this section." (Emphasis Supplied)

D. That in accordance with Conclusion of Law "C", supra, the petition of Clarence Napier and Alice Napier is denied and the notice and demands dated April 20, 1978 and September 7, 1977 for the years 1975 and 1976 are sustained, together with such additional penalties and interest as may be lawfully due and owing.

DATED: Albany, New York

JAN 20 1984

STATE TAX COMMISSION

Rodolph A. Allen
PRESIDENT

Francis R. Kolmy
COMMISSIONER

Mark J. O'Neil
COMMISSIONER