

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Abe Baron : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Year :  
1978.

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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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Abe Baron, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abe Baron  
225 E. 36 St., #12F  
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  
6th day of February, 1985.

David Parchuck

Annice R. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 6, 1985

Abe Baron  
225 E. 36 St., #12F  
New York, NY 10016

Dear Mr. Baron:

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

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In the Matter of the Petition

of

ABE BARON

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article  
22 of the Tax Law for the Year 1978.

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Petitioner, Abe Baron, 225 East 36th Street, Apt. #12F, 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 year 1978 (File No. 41705).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 25, 1984 at 10:45 A.M., with all briefs to be submitted by August 16, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Kevin A. Cahill, Esq., of counsel).

ISSUE

Whether petitioner timely filed a claim for refund for the year 1978.

FINDINGS OF FACT

1. Petitioner herein, Abe Baron, submitted a New York State and New York City income tax resident return for the year 1978 which was received by the Audit Division on September 10, 1982. On said return petitioner computed a New York State personal income tax due of \$315.00 and a New York City personal income tax due of \$148.00, for a combined total due of \$463.00. State tax withheld of \$754.00 and City tax withheld of \$52.00 were also shown on said

return. Petitioner's return for 1978 claimed a refund in the amount of \$343.00 (\$754.00 + \$52.00 - \$463.00).

2. The Audit Division, on December 22, 1982, advised petitioner that the refund of \$343.00, as claimed on the 1978 return submitted on September 10, 1982, could not be allowed since the deadline for filing for a refund had expired on April 15, 1982.

3. As of December 1, 1981, petitioner had not yet filed his Federal and New York State and City income tax returns for the years 1976, 1977, 1978, 1979 and 1980. Sometime in early December, 1981, petitioner met with his accountant for the purposes of having his Federal and State and City income tax returns prepared for said years. After a short period petitioner's accountant called and advised petitioner that he had refunds due him from the Internal Revenue Service for all five years and that, for New York State and City purposes, he had refunds due him for 1976, 1977, 1978 and 1980. For the year 1979, petitioner's return showed a balance due New York State of \$34.00.

4. On December 10, 1981, petitioner obtained a money order payable to "New York State Income Tax" in the amount of \$34.00. On or about December 10, 1981, petitioner delivered the aforementioned money order to his accountant's office and, while there, petitioner signed the Federal and State and City returns for the years 1976 through 1980. Petitioner was under the impression that his accountant was going to mail the Federal and State and City returns to the proper agencies.

5. Sometime in late February or early March of 1982, petitioner met his accountant "on the street" and, during their conversation, petitioner discovered that his accountant had been under the impression that petitioner was going to mail the Federal and State and City returns. Petitioner retrieved the 1976

through 1980 Federal and State and City returns from his accountant's office and mailed them to the respective agencies sometime in late February or early March, 1982. Petitioner placed all five Federal tax returns in one large envelope and mailed it to the Internal Revenue Service. At the same time and at the same location, petitioner mailed all five New York State and City income tax returns in one envelope to the Audit Division. Included with the five returns was the money order dated December 10, 1981 in the amount of \$34.00 in payment of the tax due for 1979.

6. The Internal Revenue Service received petitioner's Federal income tax returns for the years 1976 through 1980 on or before March 2, 1982. The Internal Revenue Service denied petitioner's claims for refund for the years 1976 and 1977 asserting that said claims were not timely filed. The refunds claimed on petitioner's 1978, 1979 and 1980 Federal income tax returns were deemed timely claims for refund and said refunds were therefore granted.

7. The Audit Division has no record of receiving petitioner's 1976 or 1977 New York State and City income tax returns. For the 1978 tax year, the Audit Division's records indicate that petitioner's return was first received on September 10, 1982. Petitioner's 1979 New York State and City tax return, although not submitted in evidence, must have been received by the Department of Taxation and Finance sometime prior to April 22, 1982. This finding is based on a letter dated April 22, 1982, addressed to petitioner from the Processing Division of the Department of Taxation and Finance, wherein the money order dated December 10, 1981 in the amount of \$34.00 was returned to petitioner since it was "stale dated". Petitioner received from the Audit Division the refund as claimed on his 1980 New York State and City tax return.

8. Petitioner's testimony that the New York State and City tax returns for the years 1976 through 1980 were mailed in one large envelope sometime in late February or early March of 1982 was clear, consistent, uncontroverted, supported by documentary evidence and found to be credible. The 1978 New York State and City tax return submitted by petitioner on September 10, 1982 was a duplicate of the return mailed by petitioner in late February or early March of 1982. Said duplicate return was submitted by petitioner at the suggestion of an employee of the Audit Division.

#### CONCLUSIONS OF LAW

A. That petitioner has sustained his burden of proof [Tax Law §689(e)] to show that his 1978 New York State and City income tax return was mailed on or before March 2, 1982.

Petitioner established, through documentary evidence, that he mailed his 1976 through 1980 Federal income tax returns sometime prior to March 2, 1982 and that he mailed his 1979 New York State and City income tax return prior to April 22, 1982. It is safe to conclude that petitioner's 1979 New York State and City income tax return was filed on or before April 15, 1982, given the volume of returns filed during this peak period. It is highly unlikely that the Processing Division could have received petitioner's 1979 New York State and City income tax return after April 15, 1982 and still have been able to return petitioner's "stale dated" check by April 22, 1982, a mere seven-day period which included only five business days. Given this factual pattern, the inference is warranted that petitioner filed his 1979 New York State and City tax return at the same time that his 1976 through 1980 Federal tax returns were filed, i.e. on or before March 2, 1982.

Having established that petitioner's 1979 New York State and City income tax return was filed on or before March 2, 1982, the timeliness of petitioner's 1978 New York State and City tax return hinges upon whether or not said 1978 return was mailed with the 1979 return. Considering all the evidence presented, specifically, that petitioner mailed all five Federal tax returns in one envelope on or before March 2, 1982, that petitioner's 1979 New York State and City return was mailed on or before March 2, 1982 and petitioner's credible testimony that the New York State and City tax returns for 1976 through 1980 were mailed in one envelope at the same time and at the same location as the Federal tax returns, leads to the conclusion that petitioner's 1978 New York State and City tax return was mailed with his 1979 return on or before March 2, 1982. Furthermore, it seems implausible that petitioner mailed all five Federal tax returns for the years 1976 through 1980, and at the same time mailed only the 1979 New York State and City tax return (see Matter of Isaac and Harriet Luban, State Tax Commission, June 11, 1982).



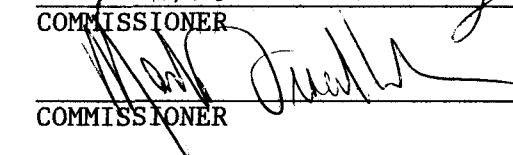
B. That petitioner's 1978 New York State and City income tax return claiming a refund of \$343.00 was filed on or before March 2, 1982 and, therefore, said return constituted a timely claim for refund within the statute of limitations provided for in subsection (a) of section 687 of the Tax Law.

C. That the petition of Abe Baron for a refund of \$343.00 is granted together with such interest as may be lawfully due and owing.

DATED: Albany, New York

FEB 06 1985

STATE TAX COMMISSION

  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Abe Baron : AFFIDAVIT OF MAILING  
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Abe Baron  
455 Broad Ave.  
Ridgefield, NJ 07657

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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  
10th day of May, 1985.

David Parchuck

James W. Hagan

Authorized to administer oaths  
pursuant to Tax Law section 174



TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU

TE CAMPUS

Y, N. Y. 12227

CLAIM

0324

DATE

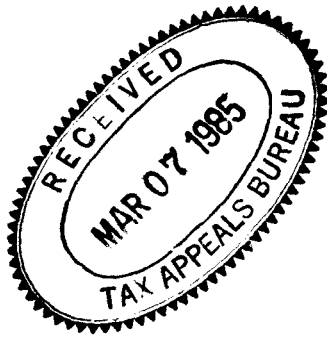
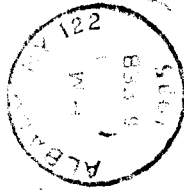
2/8/85

CERTIFIED

P 693 169 517

MAIL

Detached  
PS Form  
Oct. 1980



Baron  
225 E. 36 St., #12F  
New York, NY 10016

Uncd.  
After  
Ins.

Do not remove from envelope

TA 55 (5-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU

TE CAMPUS

Y, N. Y. 12227

CLAIM CHECK  
NO.

0324

☐ HOLD

DATE

2/8/85

1ST NOTICE

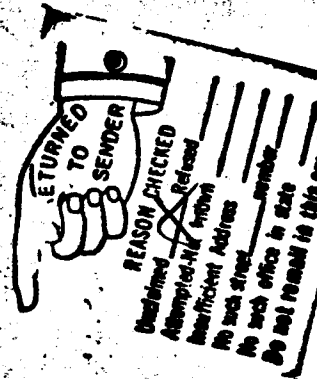
2ND NOTICE

2-14

RETURN

2-22

Delivered from  
PS Form 3849  
Oct. 1980



Baron  
225 E. 36 St., #12F  
New York, NY 10016



CERTIFIED

P 693 169 517

MAIL

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

February 6, 1985

REMAILED MAY 10, 1985

Abe Baron  
225 E. 36 St., #12F  
New York, NY 10016

Dear Mr. Baron:

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.

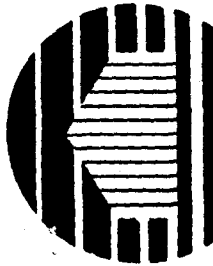
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Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative



**BENEFICIAL HOME**

Beneficial Home Improvement, Inc.

455 Broad Avenue  
Ridgefield, NJ 07657



Mr James Haefler  
c/o State Tax Comm.  
Taxes Appeals Bureau  
Bldg G Room 107  
State Campus  
Albany, N.Y. 12227