

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Anthony P. & Maria Campione :  
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 Years :  
1977 - 1979. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

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 7th day of November, 1985, he served the within notice of Decision by certified mail upon Anthony P. & Maria Campione, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony P. & Maria Campione  
32 Jones St.  
New York, NY 10014

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  
7th day of November, 1985.

David Parchuck

Annunzio A. Angelucci

Authorized to administer oaths  
pursuant to Tax Law section 174

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

November 7, 1985

Anthony P. & Maria Campione  
32 Jones St.  
New York, NY 10014

Dear Mr. & Mrs. Campione:

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	:	
ANTHONY P. CAMPIONE and MARIA CAMPIONE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1977, 1978 and	:	
1979.	:	

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Petitioners, Anthony P. Campione and Maria Campione, 32 Jones Street, New York, New York 10014, 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 1977, 1978 and 1979 (File No. 47781).

A 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 May 20, 1985 at 1:15 P.M. Petitioner Anthony P. Campione appeared pro se and for his wife, Maria Campione. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

#### ISSUES

I. Whether petitioners' claim for refund was timely filed with respect to taxable years 1977 and 1978.

II. Whether petitioner Anthony P. Campione's salary income is properly subject to New York State personal income tax.

#### FINDINGS OF FACT

1. Petitioners, Anthony P. Campione and Maria Campione, timely filed joint New York State income tax resident returns for the years 1977, 1978 and

1979. On each return Mr. Campione reported his salary income derived from Amtrak Railroad Corp.

2. On December 17, 1982, petitioners submitted a letter to the New York State Income Tax Bureau wherein they requested a refund of all New York State income taxes withheld from Mr. Campione's salary income during the years 1977, 1978 and 1979. Said letter, which was deemed to constitute a claim for refund, did not specifically state the amount of refund claimed for each of said years. Petitioners' follow-up letter, dated April 21, 1983, stated the amount of refund claimed for 1978 as \$733.00 and for 1979 as \$256.00. No specific amount was stated for 1977.

3. On August 29, 1983, the Audit Division issued a Notice of Disallowance to petitioners advising them that their claim had been disallowed in full.

4. According to their petition, the amount of refund claimed by petitioners for 1977 was \$403.00.

5. Petitioner Anthony P. Campione argued that it is unconstitutional for New York State to impose a personal income tax on his salary income. As his authority, he cited Article XVI, §5 of the New York State Constitution. He made no claim that such income is exempt from Federal income tax.

6. The Audit Division's representative argued that Mr. Campione's salary income is properly subject to New York State personal income tax. He further argued that petitioners' claim for 1977 and 1978 should be denied on the basis that the aforestated claim for refund was late filed with respect to said years.

#### CONCLUSIONS OF LAW

A. 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..."

B. That section 687(h) of the Tax Law provides that:

"For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer."

C. That since the taxes for which refund is claimed were paid through withholding, the three year period of limitation for filing of said claim is applicable. Accordingly, petitioner's claim for refund for each year at issue must have been filed by the date specified below:

<u>Year</u>	<u>Last Day for Filing Claim for Refund</u>
1977	April 15, 1981
1978	April 15, 1982
1979	April 15, 1983

Since petitioners' claim for refund for all three years was filed on December 17, 1982, said claim, insofar as it relates to taxable years 1977 and 1978, was not timely filed.

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 the New York State Tax Law is presumed to be constitutionally valid at the administrative level of the State Tax Commission.

F. That section 611(a) of the Tax Law provides that:

"The New York taxable income of a resident individual shall be his New York adjusted gross income less his New York deduction and New York personal exemptions, as determined under this part."

G. That section 612(a) of the Tax Law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications (none of which are applicable herein) specified in this section."


H. That petitioner Anthony P. Campione's salary income derived during the years 1977, 1978 and 1979 is properly subject to the imposition of New York State personal income tax within the meaning and intent of sections 611(a) and 612(a) of the Tax Law.

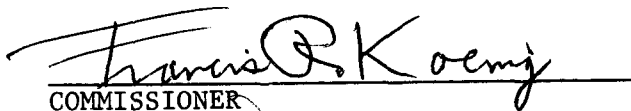
I. That the petition of Anthony P. Campione and Maria Campione is denied and the Notice of Disallowance issued August 29, 1983, with respect to taxable years 1977, 1978 and 1979, is sustained.

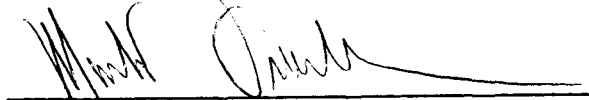
DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER