

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
I.S.A. in New Jersey, Inc. :  
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 Period :  
1/1/71-6/30/81. :  
:

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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 18th day of January, 1985, he served the within notice of Decision by certified mail upon I.S.A. in New Jersey, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

I.S.A. in New Jersey, Inc.  
P.O. Box 342  
Mahwah, NJ 07430

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  
18th day of January, 1985.

David Parchuck

James A. Hayward

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition  
of  
I.S.A. in New Jersey, Inc.

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  
Period 1/1/71-6/30/81.

State of New York :  
County of Albany : ss.:

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 18th day of January, 1985, he served the within notice of Decision by certified mail upon John F. Martin, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John F. Martin  
36 West 44th Street  
New York, NY 10036

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
18th day of January, 1985.

David Paruchuck

Annex O'Brien  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

January 18, 1985

I.S.A. in New Jersey, Inc.  
P.O. Box 342  
Mahwah, NJ 07430

Gentlemen:

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: Petitioner's Representative  
John F. Martin  
36 West 44th Street  
New York, NY 10036  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
I.S.A. IN NEW JERSEY, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Period January 1,	:	
1971 through June 30, 1981.	:	

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Petitioner, I.S.A. in New Jersey, Inc., P.O. Box 342, Mahwah, New Jersey 07430, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the period January 1, 1971 through June 30, 1981 (File No. 40756).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 25, 1984 at 9:15 A.M., with all briefs to be submitted by July 30, 1984. Petitioner appeared by John F. Martin, Esq. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner was required to file a claim for refund with the Audit Division prior to claiming a refund under the special refund authority granted the State Tax Commission pursuant to section 697(d) of the Tax Law.

II. Whether petitioner is entitled to a refund pursuant to the authority vested in the State Tax Commission by section 697(d) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, I.S.A. in New Jersey, Inc., is a New Jersey corporation authorized to do business in the State of New York and which maintains its

administrative offices in Harriman, New York. During the years 1971 through 1981, petitioner employed individuals who worked at its plants in Mahwah and Metuchen, New Jersey and who were residents of New York State.

2. During the years in issue, petitioner deducted state withholding taxes from its employees' gross wages. With respect to the New York residents who worked at petitioner's New Jersey plants, petitioner withheld taxes in the aggregate amount of \$88,120.04 for the years 1971 through 1981. Petitioner paid over to New York State all of the taxes withheld from its employees who were New York residents.

3. On February 22, 1982, the State of New Jersey, Department of the Treasury, Division of Taxation issued a Notice of Assessment (Determination) against petitioner in the amount of \$88,120.04 plus penalty and interest. The notice asserted that petitioner was liable for a deficiency in said amount under the Emergency Transportation Tax of the State of New Jersey. The amount assessed by New Jersey was identical to the amount withheld for New York residents because the Emergency Transportation Tax<sup>1</sup> was a tax on out-of-state commuters imposed at the same rate as the New York State income tax.

4. Petitioner filed a petition for refund claiming a refund under the special refund authority granted the State Tax Commission by section 697(d) of the Tax Law. Petitioner asserted that the withholding taxes in issue had been paid under a mistake of fact and that no questions of fact or law were involved and that it was, therefore, entitled to a refund. Petitioner has not paid any of the taxes claimed to be due by the State of New Jersey nor have any steps

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<sup>1</sup> The Emergency Transportation Tax was declared unconstitutional by the New Jersey Supreme Court in 1983 (see Salorio v. Glaser, N.J. Sup. Ct., June 8, 1983).

been taken by petitioner to ascertain whether the amount claimed by New Jersey is the amount actually due.

5. The Audit Division maintains that the withholding taxes were properly remitted to New York and were not erroneously or illegally collected since petitioner was required to collect the New York withholding taxes and did not withhold any New Jersey taxes. The Audit Division also argues that there are questions of fact involved in this matter thereby precluding a refund under the provisions of section 697(d) of the Tax Law. In particular, the Audit Division points out that there is a question concerning the exact amount due New Jersey since if any employees who were New York residents paid New Jersey nonresident tax, the amount due would be adjusted. Moreover, if such employees took a credit on their New York resident return for such payments then a partial refund would already have been made and petitioner would not be entitled to the full amount of the refund claimed. The Audit Division also argues that the petition for refund to the Tax Commission was premature since petitioner was required to file a claim for refund with the Audit Division under section 687 of the Tax Law prior to claiming a refund under section 697(d) of the Tax Law.

#### CONCLUSIONS OF LAW

A. That section 697(d) of the Tax Law provides:

"Special refund authority. - Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller."

B. That section 697(d) specifically allows the Tax Commission to exercise its special refund authority "at any time, without regard to any period of limitations...". It is, accordingly, to be interpreted independently of any other refund sections of Article 22 and, therefore, there is no requirement that petitioner first file a claim for refund with the Audit Division prior to claiming a refund under section 697(d).

C. That there are sufficient questions of fact or law involved in this matter so as to preclude exercise of the special refund authority provided for in section 697(d) of the Tax Law. Specifically, it is unclear whether petitioner is entitled to the entire refund claimed. This is not a case of a taxpayer mistakenly including income in its return which was clearly not subject to tax, or failing to claim a deduction or exemption to which it was unquestionably entitled. Petitioner withheld a certain amount of New York State tax from employees who were residents of this State and remitted it to the Department of Taxation and Finance as required by section 671 of the Tax Law. As discussed in Finding of Fact "5", however, all or part of the monies collected may have been refunded or credited to the individual employees based on their payment of taxes to the State of New Jersey when they filed their nonresident tax returns with said State. The record does not show that all of the taxes collected were retained by New York State or that all of the taxes claimed by the State of New Jersey were, in fact, due to that state.<sup>2</sup> Therefore, since a question of fact exists, the special refund authority of section 697(d) does not apply.

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<sup>2</sup> Although New Jersey taxes should have been withheld by petitioner, the proper amount was ultimately recovered through the filing of nonresident returns by New York State residents who were employed by petitioner.

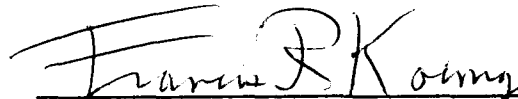
D. That the petition of I.S.A. In New Jersey is denied.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER