

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
James J. Kerrigan, Jr. :
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 :
1980. :
:

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 James J. Kerrigan, Jr. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James J. Kerrigan, Jr.
3430 Gulf Shore Blvd. N.
Naples, Florida 33940

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

James A. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 7, 1985

James J. Kerrigan, Jr.
3430 Gulf Shore Blvd. N.
Naples, Florida 33940

Dear Mr. Kerrigan:

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	:	
	:	
JAMES J. KERRIGAN, JR.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	

Petitioner, James J. Kerrigan, Jr., 3430 Gulf Shore Boulevard North, Naples, Florida 33940, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1980 (File No. 51353).

On April 3, 1985, petitioner waived a hearing before the State Tax Commission and requested the Commission to render its decision, based on the Department of Taxation and Finance file as presently constituted plus a stipulation of facts executed by petitioner and the Audit Division on or about July 25, 1985.

ISSUE

Whether in the taxable year 1980, petitioner was entitled to claim a resident tax credit of \$1,068.80, the amount withheld from his wages during such year by the State of New Jersey and subject to the limitation prescribed by Tax Law section 620(b)(1).

FINDINGS OF FACT

1. For the taxable year 1980, petitioner, James J. Kerrigan, Jr., submitted a joint New York State Income Tax Resident Return with his wife, Margaret, indicating their address as 38 Dante Street, Larchmont, New York, and claiming a resident credit in the amount of \$1,097.10. Petitioner admitted in his reply filed in this proceeding that he had erroneously computed the resident credit,

and that the correct amount of the credit, as limited by Tax Law section 620(b)(1), should be \$1,068.80 (New York income subject to New Jersey tax \$10,231.84/total New York income \$167,507.42 x tax due under Article 22 \$17,497.61).

2. On August 30, 1983, the Audit Division issued to petitioner a Statement of Audit Changes, proposing additional personal income tax for 1980 in the amount of \$762.26, plus interest. The Statement was predicated upon the Division's recalculation of petitioner's resident tax credit and contained the following explanation:

"Adjustment is made correcting the amount claimed for the resident tax credit on your 1980 New York State personal income tax return. The credit allowed may not exceed the amount of tax imposed by such other jurisdiction. In addition you failed to take into consideration two exemptions in computing your New Jersey Emergency Transportation tax. Our computation indicates that the tax allowable as a credit under Section 620 of the New York State Tax Law is \$334.84.

* * *

Resident tax credit claimed on return	\$1,097.10
Resident tax credit - corrected	<u>334.84</u>
PERSONAL INCOME TAX DUE	\$ 762.26"

Thereafter, on February 2, 1984, the Audit Division issued to petitioner a Notice of Deficiency, asserting personal income tax for 1980 in the amount as set forth in the Statement of Audit Changes, with interest calculated to the date of the Notice.

3. For the taxable year 1980, petitioner filed with the New Jersey Division of Taxation an Emergency Transportation Tax Nonresident Return and a Gross Income Tax Nonresident Return, seeking refund of \$963.11. Such amount represented the excess of New Jersey tax withheld from petitioner's wages (\$1,300.50) over the tax due to the State of New Jersey (Emergency Transportation Tax of \$337.39). On or about September 24, 1981, petitioner received a refund in the amount sought.

4. Petitioner maintains that he became a resident and domiciliary of the State of Florida on April 1, 1981, and in support of this position offered his affidavit, appended to which were eight exhibits including photocopies of his declaration of Florida domicile, Florida driver's license and Collier County voter registration card.¹ His argument then, proceeds, as follows: at the time he received his refund of New Jersey tax, his income was not subject to Article 22 taxation; therefore, on his 1980 New York personal income tax return, he was entitled to a resident credit in the full amount withheld by New Jersey, limited to \$1,068.80 by Tax Law section 620(b)(1). Should the Commission reject petitioner's argument, he requests that interest on the underpayment commence April 15, 1982 because the New Jersey refund would be taxable to him in 1981, the year of his receipt thereof.

CONCLUSIONS OF LAW

A. That Tax Law section 620(a) allows a credit against the tax imposed by Article 22 as follows:

"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."

The statutory language is unambiguous: the amount of the credit, subject to the limitations prescribed by subdivision (b), is equal to the tax imposed by the other jurisdiction. The credit does not embrace tax withheld but subsequently refunded by such other jurisdiction. Under the circumstances herein, petitioner

1 The Tax Commission finds it unnecessary to rule upon the probative value of this evidence inasmuch as petitioner's domicile during 1981 is irrelevant to the issue presented.

is entitled to a credit in the amount of \$337.39, the tax imposed by New Jersey.

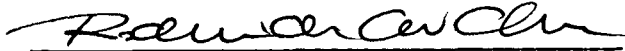
B. That where any amount of personal income tax is not paid prior to the last date prescribed for payment, interest accrues upon the underpayment "for the period from such last date to the date paid..." (section 684[a]). Interest upon petitioner's underpayment thus commenced on April 15, 1981, the last date prescribed for payment of his 1980 income tax liability.

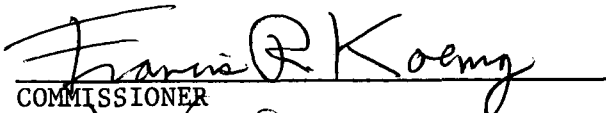
C. That the petition of James J. Kerrigan, Jr. is denied; and the Notice of Deficiency issued on February 2, 1984 is to be modified to allow him a credit of \$337.39, but except as so modified, is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


COMMISSIONER