

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Thomas J. & Valeria L. Mulvey	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1979.	:	

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 30th day of October, 1985, he served the within notice of Decision by certified mail upon Thomas J. & Valeria L. Mulvey, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas J. & Valeria L. Mulvey
76 Bosse Lane
W. Seneca, NY 14224

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
30th day of October, 1985.

David Parchuck

Connie A. Hagelma
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 30, 1985

Thomas J. & Valeria L. Mulvey
76 Bosse Lane
W. Seneca, NY 14224

Dear Mr. & Mrs. Mulvey:

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
THOMAS J. AND VALERIA L. MULVEY
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1979.

DECISION

Petitioners, Thomas J. and Valeria L. Mulvey, 76 Bosse Lane, West Seneca, New York 14224, 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 1979 (File No. 45210).

A formal hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on March 11, 1985 at 2:45 P.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether the petitioners may modify their New York income by excluding therefrom a premature distribution from an individual retirement account, the contributions to which were not deducted for New York State income tax purposes.

FINDINGS OF FACT

1. On April 8, 1983, the Audit Division issued to petitioners¹ a Notice of Deficiency asserting additional personal income tax due for 1979 in the

1 Valeria L. Mulvey is a party to this matter for the sole reason that she is the wife of petitioner Thomas J. Mulvey and filed joint tax returns with her husband for the years at issue. Therefore, references hereinafter to "petitioner" are to Thomas J. Mulvey.

amount of \$942.88, plus interest computed pursuant to a Statement of Audit Changes previously issued on April 12, 1982.

That Statement explained:

"The starting point for computing the New York tax liability is federal adjusted gross income. Therefore, your tax liability has been recomputed as shown.

	1979 NYS <u>Joint</u>
Federal Adjusted Gross	
Income Reported	36796.00
Total N.Y. Income Reported	-29827.00
Adjustment	6969.00
Taxable Inc. Stated/Adjusted	20373.00
Adjustment	6969.00
Taxable Income Corrected	27342.00
Tax on Above	2387.88
Less Income Tax Previously	
Stated/Adjusted	- 1445.00
Personal Income Tax Due	942.88"

2. Petitioner opened an Individual Retirement Account ("IRA") in 1975.
3. Petitioner subtracted contributions to his IRA in the amount of \$1,500.00 annually from gross income as reported on his Federal returns filed for the years 1977 and 1978. Petitioner did not subtract such contributions from gross income as reported on the New York income tax returns filed for the years 1977 and 1978. Petitioner did not subtract contributions to the IRA from gross income as reported on his State and Federal income tax returns filed for the years 1975 and 1976.
4. Interest earned upon the assets of the IRA was not reported as income in the years 1975 through 1978.
5. Petitioner closed the IRA in 1979 receiving proceeds therefrom of the total assets plus accrued interest of \$1,511.64 minus an early closing penalty of \$358.75. Petitioner reported a distribution of \$6,968.60 as a taxable

pension on his Federal return filed for the year 1979, but did not report this distribution on the New York state income tax return filed for that year.

6. Petitioner argues that for New York State income tax purposes, he treated the IRA as a savings account. He did not subtract the amount of his contributions to the IRA on his New York income tax returns and thus "paid" income tax on that money in the earlier years. Not having subtracted such contributions in prior years, petitioner argues he should not be required to add such contribution to his New York gross income for the year in which the IRA was closed subjecting to New York State income tax in 1979 monies previously taxed as income in 1975 through 1978. Petitioner does, however, concede that the interest earned on the assets of IRA is properly subject to tax.

CONCLUSIONS OF LAW

A. That section 408(d) of the Internal Revenue Code provides that amounts paid or distributed out of an individual retirement account shall be included in gross income by the payee for the taxable year in which the payment is received. Said section further provides that the "basis" of any person in such an account is zero.

B. 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 specified in section 612 of the Tax Law.

C. That the petitioner is required by the Tax Law to conform New York adjusted gross income to Federal adjusted gross income. There is no provision in the Tax Law which allows petitioner to value the distribution paid from the IRA for New York purposes on a basis different from that required for Federal


purposes or to deduct or subtract any portion of such distribution from New York gross income.

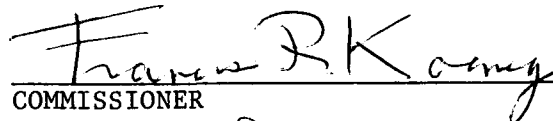
D. That the petition of Thomas J. and Valeria L. Mulvey is in all respects denied and the Notice of Deficiency dated February 8, 1983 is sustained, together with applicable interest.

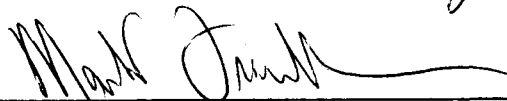
DATED: Albany, New York

STATE TAX COMMISSION

OCT 30 1985


PRESIDENT


COMMISSIONER


COMMISSIONER