

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Eugene Solomon :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for Refund :  
of New York State Personal Income Tax under Article :  
22 of the Tax Law and New York City Personal :  
Income Tax under Chapter 46, Title T of the :  
Administrative Code of the City of New York for :  
the Year 1977. :  
:

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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 14th day of March, 1985, he served the within notice of Decision by certified mail upon Eugene Solomon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene Solomon  
201-24 23rd Ave.  
Bayside, NY 11360

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  
14th day of March, 1985.

David Parchuck

James P. Heglund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 14, 1985

Eugene Solomon  
201-24 23rd Ave.  
Bayside, NY 11360

Dear Mr. Solomon:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, 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   | : |          |
| EUGENE SOLOMON                                 | : | DECISION |
| for Redetermination of a Deficiency or for     | : |          |
| Refund of New York State Personal Income Tax   | : |          |
| under Article 22 of the Tax Law and New York   | : |          |
| City Personal Income Tax under Chapter 46,     | : |          |
| Title T of the Administrative Code of the City | : |          |
| of New York for the Year 1977.                 | : |          |

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Petitioner, Eugene Solomon, 201-24 23rd Avenue, Bayside, New York 11360, 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 and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 32005).

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 October 17, 1984 at 2:15 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether petitioner should be charged interest on the additional tax due set forth in a Notice of Deficiency dated October 31, 1980.

#### FINDINGS OF FACT

1. Petitioner herein, Eugene Solomon, timely filed a New York State and City Income Tax Resident Return for 1977 on April 2, 1978. On said return, petitioner computed a New York State income tax liability of \$1,372.00 and a New York City income tax liability of \$476.00, for a combined tax due of

\$1,848.00. Petitioner's return claimed a credit of \$2,623.00 for payments made to an estimated tax account, leaving an overpayment of \$775.00 (\$2,623.00 less \$1,848.00). Petitioner elected to have \$675.00 of said overpayment applied to his 1978 New York State estimated tax account and the balance of \$100.00 applied to his 1978 New York City estimated tax account.

2. On July 31, 1978, the Audit Division received an amended return from petitioner for the year 1977. On said amended return, petitioner's New York State and City personal income tax and minimum income tax liability totalled \$3,026.00. The amended return claimed credit of \$2,623.00 for estimated tax payments, leaving a balance due of \$403.00. The balance due of \$403.00 was paid by petitioner at the time he filed said amended return.

3. On August 30, 1979, the Audit Division issued a Statement of Audit Changes to petitioner for 1977, proposing additional State and City tax due of \$926.33, plus interest. The additional tax due of \$926.33 was premised on two adjustments which are summarized below:

(a) Reduction of Estimated Tax Credit. The Audit Division maintains that petitioner's amended return for 1977 erroneously claimed a credit of \$2,623.00 for estimated tax payments. It is the Audit Division's position that petitioner, on his original return for 1977, made an irrevocable election to have the overpayment of \$775.00 credited to his 1978 State and City estimated tax accounts and that said election cannot be changed by filing an amended return. Accordingly, the Audit Division asserts that petitioner, on his 1977 amended return, can claim a credit for estimated tax payments of only \$1,848.00 (\$2,623.00 less \$775.00).

(b) Correction in Computation of Minimum Income Tax. On his amended return, in computing his State and City minimum income tax, petitioner claimed

a net operating loss carryover reduction of \$1,839.00. The Audit Division disallowed said reduction on the ground that petitioner had no current year net operating loss.

4. Based on the aforementioned Statement of Audit Changes, the Audit Division, on October 31, 1980, issued a Notice of Deficiency to petitioner for 1977. Said Notice proposed additional tax due of \$926.33, plus interest of \$146.35, for a total due of \$1,072.68. The Notice allowed petitioner credit for a payment of \$926.33, leaving a balance due of \$146.35.

5. Petitioner does not contest the additional tax due as proposed in the Notice of Deficiency dated October 31, 1980, and, in fact, concedes the accuracy of the two adjustments proposed by the Audit Division. Petitioner does maintain, however, that he should not be charged interest on the additional tax due. Mr. Solomon argues that the Audit Division had the use of the \$775.00 which was credited from his original 1977 return to his 1978 State and City estimated tax accounts; that he received no interest on said amount; and that to charge him interest when the State and City had the use of his money is unfair.

#### CONCLUSIONS OF LAW

A. That there is no provision in either Article 22 of the Tax Law or Chapter 46, Title T of the Administrative Code of the City of New York which would permit interest to be waived. Petitioner's election to have the \$775.00 overpayment shown on his original 1977 return credited to his 1978 State and City estimated tax accounts is irrevocable [Tax Law section 660; Administrative Code section T46-160.0; 20 NYCRR 154.3(c) and 20 NYCRR 290.2]. Petitioner is not entitled to receive interest on the 1977 overpayment of \$775.00 which was credited to his 1978 State and City estimated tax accounts.

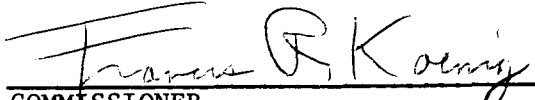
B. That the petition of Eugene Solomon is denied in its entirety; and  
that the Notice of Deficiency dated October 31, 1980 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 14 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER