

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Clifford Thompson : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of NYS 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 Years 1977 & 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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Clifford Thompson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clifford Thompson
18 Devon Place
Staten Island, NY 10301

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
6th day of February, 1985.

David Parchuck

Annie A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Clifford Thompson
18 Devon Place
Staten Island, NY 10301

Dear Mr. Thompson:

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, 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 :
CLIFFORD THOMPSON : 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 Years 1977 and 1979. :

Petitioner, Clifford Thompson, 18 Devon Place, Staten Island, New York 10301, 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 years 1977 and 1979 (File No. 40323).

A small claims 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 March 13, 1984 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel).

ISSUES

- I. Whether petitioner's claim for refund for 1977 was timely filed.
- II. Whether petitioner may claim a deduction for alimony in 1979, where such alimony payments were made in taxable year 1977.

FINDINGS OF FACT

1. Clifford Thompson (hereinafter petitioner) filed a New York State Income Tax Resident Return (with New York City Personal Income Tax) for the

year 1977. Although petitioner had claimed a deduction for alimony of \$4,800.00 on his 1977 Federal return, he inadvertently neglected to claim such deduction on his New York State return.

2. On January 30, 1980, petitioner filed a New York State Income Tax Resident Return (with City of New York Personal Income Tax) for the year 1979 whereon he claimed an adjustment to income of \$4,800.00. Said adjustment claimed was for the alimony paid in 1977 which he failed to claim on his 1977 New York return.

3. On November 4, 1981, the Audit Division issued a Statement of Audit Changes to petitioner wherein, based on a Federal/State income match, the adjustment to income for alimony of \$4,800.00 claimed on his 1979 New York State return, but not claimed for Federal purposes in said year, was disallowed in full. Said statement explained that:

"The starting point for computing the New York tax liability is Federal adjusted gross income..."

4. On November 7, 1981, petitioner filed a Claim for Credit or Refund of Personal Income Tax for the year 1977. Said claim, in the amount of \$926.00, was filed based on petitioner's omission of the alimony deduction on his 1977 New York State return.

5. On September 10, 1982, the Audit Division sent petitioner a letter wherein it was explained that:

"A 1977 amended return on which a refund is requested must have been filed by April 15, 1981. Since your 1977 amended return was filed after April 15, 1981, no refund can be issued on your 1977 amended return."

6. Petitioner claimed that he filed an amended 1977 return with his 1979 return in early 1980. He submitted a copy of such amended return on September 15, 1982. Said copy was dated January 31, 1980. The Audit Division contended that

it had no record of receiving petitioner's original amended return; however, it appears evident that such amended return was filed prior to the Audit Division's receipt of the copy on September 15, 1982 since its letter of September 10, 1982 makes specific reference to such amended return.

7. On October 7, 1982, the Audit Division issued a Notice of Deficiency against petitioner for the year 1979. Said notice, which was based on the Statement of Audit Changes issued November 4, 1981, asserted additional New York State personal income tax of \$671.52, New York City personal income tax of \$206.07, plus interest of \$235.71, for a total due of \$1,113.30.

8. Petitioner argued that he claimed the alimony deduction on both his 1979 return and his 1977 amended return, which he alleged was filed in conjunction therewith, in order to give the State the option of allowing the deduction in either year, at the State's discretion.

9. Petitioner's 1977 Federal return was audited by the Internal Revenue Service. As the result of said audit, an adjustment of \$830.00 was made to contributions. On July 1, 1979 petitioner filed Form IT-115, Report of Change in Federal Taxable Income, and paid the additional New York State and City taxes of \$159.00 computed to be due thereon.

10. The contributions claimed on petitioner's amended 1977 New York State return were not reduced by the adjustment of \$830.00.

11. In his petition of November 20, 1982, petitioner claimed an increased refund totaling \$1,085.00 for 1977. Said amount is comprised of his original claim of \$926.00 plus the \$159.00 paid on July 1, 1979.

CONCLUSIONS OF LAW

A. 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..."

Section T46-112.0(a) of the Administrative Code of the City of New York provides an identical definition for City adjusted gross income.

B. That petitioner is not properly entitled to the \$4,800.00 alimony deduction in 1979 since he is a cash basis taxpayer and the alimony payments at issue were made in 1977. Furthermore, since said deduction was not claimed for Federal purposes in 1979, it is not properly allowable for State and City purposes pursuant to section 612(a) of the Tax Law and section T46-112.0(a) of the Administrative Code of the City of New York.

C. That section 687(a) of the Tax Law and section T46-187.0(a) of the Administrative Code of the City of New York provide 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..."

D. That section 687(e) of the Tax Law provides in pertinent part that:

"No credit or refund shall be allowed or made, except as provided in subsection (f) of this section or subsection (d) of section six hundred ninety, 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."

Section T46-187.0(e) of the Administrative Code of the City of New York contains a similar provision.

E. That petitioner's Claim For Credit or Refund of Personal Income Tax filed for the year 1977 on November 7, 1981 was late filed pursuant to section 687(a) of the Tax Law and section T46-187.0(a) of the Administrative Code of the City of New York. With respect to the filing of an amended return by petitioner for 1977, he has failed to sustain his burden of proof imposed by section 689(e) of the Tax Law, and section T46-189.0(e) of the Administrative Code of the City of New York, to show that such amended return was timely filed.

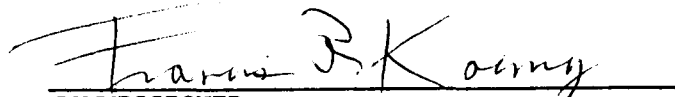
F. That the petition of Clifford Thompson is denied. The Notice of Deficiency issued on October 7, 1982 is sustained and petitioner's claim for Credit or Refund of Personal Income Tax filed for the year 1977 on November 7, 1981 is denied.

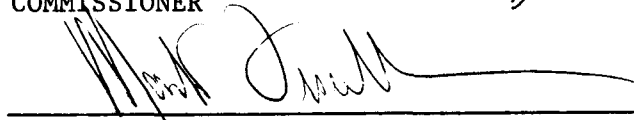
DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER