

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George & Mary Ann Veras :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State and New York City Personal Income :
Taxes under Articles 22 and 30 of the Tax Law for :
the Year 1976. :

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 George & Mary Ann Veras, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George & Mary Ann Veras
33 Graham Road
Scarsdale, NY 10583

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

Constance A. Hayes-Lund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George & Mary Ann Veras :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of New York State and New York City Personal Income :
Taxes under Articles 22 and 30 of the Tax Law for :
the Year 1976. :

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 Diane F. Krausz, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Diane F. Krausz
Townsend, Rabinowitz, Pantaleoni & Valente, P.C.
535 Fifth Ave.
New York, NY 10017

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
14th day of March, 1985.

David Parchuck

Emilie A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 14, 1985

George & Mary Ann Veras
33 Graham Road
Scarsdale, NY 10583

Dear Mr. & Mrs. Veras:

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: Petitioner's Representative
Diane F. Krausz
Townsend, Rabinowitz, Pantaleoni & Valente, P.C.
535 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE VERAS AND MARY ANN VERAS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Articles 22 and	:	
30 of the Tax Law for the Year 1976.	:	

Petitioners, George Veras and Mary Ann Veras, 33 Graham Road, Scarsdale, New York 10583, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 38370).

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 June 15, 1984 at 9:15 A.M., with all briefs to be submitted by July 25, 1984. Petitioners appeared by Diane F. Krausz, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioners timely filed a claim for refund for the year 1976.

FINDINGS OF FACT

1. Petitioners herein, George Veras and Mary Ann Veras, timely filed a joint New York State and New York City income tax resident return for the year 1976. Petitioners subsequently submitted an amended State and City return for 1976, claiming a refund of \$1,099.00. The refund claimed on the amended return was premised on petitioners' election to file separate State and City returns in lieu of a joint return.

2. On March 10, 1981, the Audit Division advised petitioners that the refund of \$1,099.00, as claimed on their amended return, could not be allowed since the statute of limitations for refund had expired. The Audit Division asserted that petitioners' amended return was postmarked on April 16, 1980 and that the deadline for filing for a refund for 1976 had expired on April 15, 1980.

3. The amended return in question was signed by petitioners' accountant on April 10, 1980 and by petitioners on April 15, 1980. The envelope in which said amended return was mailed to the Audit Division contained a machine metered stamp bearing the date April 16, 1980. Said envelope also contained a United States postmark dated April 16, 1980.

4. Petitioners did not appear at the hearing held herein to offer their testimony. However, petitioner George Veras stated in a sworn affidavit dated July 13, 1984 that:

"I personally put them (the 1976 New York State and City amended return) in the mailbox on the corner of Graham and Memaroneck Road in Scarsdale, New York at about 3:00 p.m. on the afternoon of April 15, 1980, the last day for timely filing. Apparently, although the mail was most probably picked up by the post office that day, it was not processed until the next day and therefore the envelope was postmarked April 16th."

No explanation was offered as to why the envelope in which the amended return was mailed contained a machine metered stamp dated April 16, 1980.

CONCLUSIONS OF LAW

A. That section 1312(a) of Article 30 of the Tax Law (imposing New York City personal income tax) provides that certain provisions of Article 22 of the Tax Law (imposing New York State personal income tax), including section 681 through section 697 of Article 22, "...shall apply to a tax imposed pursuant to the authority of this article with the same force and effect as if those

provisions had been incorporated in full into this article...". Accordingly, those sections of Article 22 of the Tax Law cited in Conclusions of Law "B" and "C", infra, are equally applicable for both New York State and New York City personal income tax purposes.

B. That any return or claim required to be filed on or before a prescribed date, which is delivered by United States mail, shall be deemed delivered on the date of the United States postmark stamped on the envelope. Tax Law §691(a). Pursuant to section 691(a) of the Tax Law, petitioners' 1976 amended New York State and City income tax return is considered to have been filed on April 16, 1980. The affidavit submitted by petitioner George Veras (see: Finding of Fact "4", supra) is insufficient to sustain the burden of proof [Tax Law §689(e)] to show that said 1976 amended return was filed on April 15, 1980. Certain statements made in the aforementioned affidavit are contradicted by the fact that both the United States postmark and the machine metered stamp were dated April 16, 1980.

C. That the 1976 amended return submitted by petitioners on April 16, 1980 was filed beyond the statute of limitations for credit or refund as defined in section 687(a) of the Tax Law. Accordingly, the Audit Division has properly denied petitioners the refund of \$1,099.00 as claimed on said amended return.

D. That the petition of George Veras and Mary Ann Veras is denied; and that the notice of refund denial dated March 10, 1981 is sustained.

DATED: Albany, New York

MAR 14 1985

STATE TAX COMMISSION

Rudolph W. Allen
PRESIDENT

James R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER