

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Anthony J. & Maureen K. Berejka : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income Tax  
under Article(s) 22 of the Tax Law :  
for the Year 1980.

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State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of May, 1986, he/she served the within notice of decision by certified mail upon Anthony J. & Maureen K. Berejka the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony J. & Maureen K. Berejka  
Watch Way Rd. #1  
Huntington, NY 11743

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  
28th day of May, 1986.

David Parchuck

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

May 28, 1986

Anthony J. & Maureen K. Berejka  
Watch Way Rd. #1  
Huntington, NY 11743

Dear Mr. & Mrs. Berejka:

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

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	:	
ANTHONY J. and MAUREEN K. BEREJKA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	

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Petitioners, Anthony J. and Maureen K. Berejka, Watch Way, R.D. #1, Huntington, New York 11743, 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. 50038).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1986 at 10:55 A.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division's imposition of interest on an income tax deficiency against petitioners was proper.

FINDINGS OF FACT

1. Petitioners, Anthony J. and Maureen K. Berejka, timely filed a joint New York State Income Tax Resident Return for the year 1980. According to a statement attached to their return, petitioners reported their total income tax due, after accounting for taxes withheld, to be \$110.80. A check in that amount was enclosed with the return.

2. On August 12, 1981 the Audit Division issued to petitioners a Notice of Tax Due asserting income tax due for the year 1980 in the amount of \$4,949.80 including penalty and interest.

3. By letter dated August 31, 1981 Mr. Berejka questioned the Audit Division's assertion and requested an explanation of how the additional tax due had been calculated. On May 17, 1982 the Audit Division replied to Mr. Berejka's inquiry and requested additional information from Mr. Berejka in order to complete the Audit Division's review of petitioners' return. Mr. Berejka responded to the Audit Division's request for additional information by letters dated August 19, 1982 and September 3, 1982.

4. Based on the additional information submitted by Mr. Berejka the Audit Division issued to petitioners a Statement of Audit Changes dated January 19, 1983 for the year at issue asserting income tax due in the amount of \$3,122.61 together with interest of \$703.41 for a total due of \$3,824.02. The Statement of Audit Changes also explained that the Notice of Tax Due previously issued to petitioners had been cancelled; that the penalty previously asserted therein had been cancelled; and further explained the Audit Division's basis for the issuance of the Statement of Audit Changes.

5. On February 11, 1983 petitioners paid the tax asserted by the Audit Division, but not the interest. In a letter accompanying his payment Mr. Berejka protested the Audit Division's imposition of interest on the tax due.

6. By letter dated June 6, 1983 the Audit Division advised petitioners that the Tax Law makes no provision for the waiver of interest imposed on income tax not paid on or before the due date of a tax return, and further advised petitioners that a Notice of Deficiency would be issued in the event that the amount in issue was not paid.

7. On August 3, 1983 the Audit Division issued a Notice of Deficiency to petitioners asserting \$732.60 in interest due. The interest imposed was based upon the additional income tax of \$3,122.61 which was paid by petitioners on February 11, 1983.

8. In response to further inquiries from Mr. Berejka, the Audit Division, by letter dated July 12, 1984, explained the manner in which it had calculated the interest in issue and again explained its position regarding waiver of such interest.

9. At the hearing Mr. Berejka admitted liability for the additional income tax underlying the interest at issue. In addition he did not dispute the Audit Division's position that the Tax Law does not provide for waiver of interest. Mr. Berejka contended that notwithstanding the lack of a provision in the Tax Law allowing for waiver of interest, the Audit Division nonetheless had no right to impose interest in this case because it had needlessly and carelessly prolonged the matters at issue herein by failing to adequately respond to his inquiries in a timely and effective manner.

#### CONCLUSIONS OF LAW

A. That section 684 of the Tax Law provides for the imposition of interest on any amount of income tax not paid on or before the date prescribed for payment. The interest at issue herein was, therefore, properly imposed by the Audit Division.

B. That Article 22 of the Tax Law makes no provision for the suspension, waiver or abatement of interest properly imposed.

C. That petitioners' assertion that the Audit Division unnecessarily prolonged this matter is tantamount to a claim of estoppel on the ground of laches. "Laches... may not be imputed to the State in the absence of statutory

authority (citations omitted). This rule is generally applied in connection with tax matters (citations omitted)." Matter of Jamestown Lodge 1681 Loyal Order of Moose, Inc. (Catherwood), 31 A.D.2d 981 (3rd Dept. 1969).

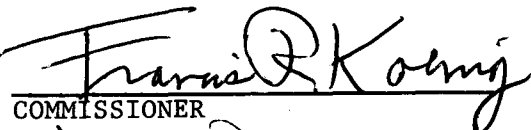
D. That the petition of Anthony J. and Maureen K. Berejka is denied and the Notice of Deficiency dated August 3, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 28 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER