

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Basil A. & Janet Fullerton : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law and 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/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 15th day of April, 1986, he/she served the within notice of Decision by certified mail upon Basil A. & Janet Fullerton the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Basil A. & Janet Fullerton  
145 Kings Highway  
Warwick, NY 10990

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  
15th day of April, 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

April 15, 1986

Basil A. & Janet Fullerton  
145 Kings Highway  
Warwick, NY 10990

Dear Mr. & Mrs. Fullerton:

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	:	
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BASIL FULLERTON AND JANET FULLERTON	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the Year 1977.	:	

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Petitioners, Basil Fullerton and Janet Fullerton, 145 Kings Highway, Warwick, New York 10990, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 40772).

A hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1985 at 9:15 A.M., with additional evidence to be submitted by January 7, 1986. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed the child care credit claimed by petitioners on their 1977 New York State income tax return.

II. Whether the Audit Division properly disallowed the resident credit claimed by petitioners on their 1977 income tax return.

III. Whether petitioners should have been allowed credit for New York State taxes withheld from the salary of petitioner Janet Fullerton.

FINDINGS OF FACT

1. Petitioners, Basil and Janet Fullerton, failed to timely file a 1977 New York State Income Tax Resident Return. Based on information obtained from the Internal Revenue Service under authorization of section 6103(d) of the Internal Revenue Code, the Audit Division issued a Statement of Audit Changes to petitioners on September 30, 1980 asserting New York State and New York City personal income tax due of \$1,221.74 for the year 1977. On or about October 16, 1981, Basil Fullerton filed a New York State Income Tax Resident Return for 1977 reporting total state and city tax due of \$712.74, less taxes withheld of \$500.16, for a balance due of \$212.58. On said return, Mr. Fullerton claimed a child care credit of \$104.00 and a resident credit of \$405.10 for taxes allegedly paid to New Jersey.

2. On October 15, 1982, the Audit Division issued a Notice of Deficiency against petitioner Basil Fullerton in the amount of \$1,221.74, plus penalty of \$580.30 and interest of \$538.68, for a total due of \$2,340.72 for the year 1977. The child care credit and resident credit claimed by Mr. Fullerton on his late filed return were disallowed and no credit was given for taxes withheld from Janet Fullerton's wages. The credit for taxes withheld and the child care credit were disallowed because Janet Fullerton did not file a return for 1977. The resident credit was disallowed because Basil Fullerton failed to prove that he filed a New Jersey tax return and to substantiate the amount of tax allegedly due the State of New Jersey.

3. Petitioners had been residing in the Bronx, New York during 1977. They encountered marital problems and, in September, 1977, petitioners separated. Janet Fullerton remained in New York and Basil Fullerton maintained several temporary residences in New Jersey for the remainder of the year. Petitioners

filed a joint federal income tax return for 1977. At the hearing, petitioners filed an amended 1977 New York State resident return electing a filing status of married filing separately on one return. Petitioners claimed the same credits as were claimed by Basil Fullerton on his original return as discussed in Finding of Fact "1". The Audit Division had previously verified the amounts withheld from the wages of Janet Fullerton.

4. Basil Fullerton failed to submit a copy of the 1977 New Jersey return he claims to have filed. He was allowed time following the hearing to submit the return, but such return has not been received by the State Tax Commission.

#### CONCLUSIONS OF LAW

A. That inasmuch as petitioners filed a joint federal income tax return for 1977, they were entitled to file separate New York State personal income tax returns on a single form. Tax Law §651(b)(2). The Audit Division did not allow credit for withholding from Janet Fullerton's wages and disallowed the child care credit solely because Janet Fullerton did not file a return for 1977. Since petitioners filed an amended return for 1977 changing their filing status to married filing separately on one return, their tax liability for 1977 is to be recomputed under such status allowing a child care credit in the amount of \$104.00 and allowing credit for taxes withheld in the amount of \$500.16.

B. That a resident may claim a credit against the personal income tax paid to another state, its political subdivisions or to the District of Columbia with respect to income derived therefrom and subject to tax under Article 22 of the Tax Law. Tax Law §620(a). In order to claim the credit, the resident individual must attach to his New York return a copy of the income tax return filed with the other state. 20 NYCRR 121.1(b)(1). Inasmuch as petitioner

Basil Fullerton was unable to substantiate the amount, if any, of income tax payable to New Jersey for 1977, as evidenced by a return filed with that state, the Audit Division properly disallowed the resident credit.


C. That the petition of Basil Fullerton and Janet Fullerton is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is directed to modify the Notice of Deficiency issued October 15, 1982 accordingly; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER