

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles R. & Christiane R. Watkins : 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 1981. :

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 3rd day of July, 1986, he/she served the within notice of Decision by certified mail upon Charles R. & Christiane R. Watkins the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles R. & Christiane R. Watkins
7 Davison Lane West
West Islip, New York 11795

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
3rd day of July, 1986.

David Parchuck

Janet M. Snay

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Charles R. & Christiane R. Watkins : 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 1981. :

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 3rd day of July, 1986, he served the within notice of Decision by certified mail upon Murray Tuck, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Murray Tuck
670 Conklin Street (Hempstead Tpke.) Box 605
Farmingdale, NY 11735

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
3rd day of July, 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

July 3, 1986

Charles R. & Christiane R. Watkins
7 Davison Lane West
West Islip, New York 11795

Dear Mr. & Mrs. Watkins:

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

Petitioner's Representative:
Murray Tuck
670 Conklin Street (Hempstead Tpke.) Box 605
Farmingdale, NY 11735

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES R. WATKINS AND CHRISTINE R. WATKINS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1981.	:	

Petitioners, Charles R. Watkins and Christine R. Watkins, 7 Davison Lane West, West Islip, New York 11795, 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 1981 (File No. 56559).

Petitioners have waived a hearing and submitted their case for decision based on the entire file. After due consideration of the file, the Commission renders the following decision.

ISSUE

Whether petitioners' claimed investment tax credit for 1981 was properly disallowed by the Audit Division.

FINDINGS OF FACT

1. Petitioners, Charles R. Watkins and Christine R. Watkins, timely filed a joint New York State Income Tax Resident Return (Form IT-201) for 1981. Included with petitioners' filing for 1981 was Form IT-212, by which petitioners claimed an investment tax credit in the sum of \$1,669.00.

2. The above-noted credit was calculated as five percent of the \$33,384.00 cost of a 1964 forty-one foot Hatteras fishing vessel acquired by petitioners on November 16, 1981.

3. On their tax return (Form IT-201), petitioners listed their occupations as "airline pilot" and "housewife", respectively. In claiming the investment credit on Form IT-212, petitioners listed "charter fishing" as the kind of business wherein the fishing vessel giving rise to the claimed credit was used. Also, on Schedule C (Profit or Loss From Business or Profession), as filed with their 1981 return and pertaining to the use of the fishing vessel, petitioners listed their main business activity as "services" and their product as "charter fishing".

4. On April 11, 1984, the Audit Division issued to petitioners a Statement of Audit Changes reflecting additional personal income tax due for 1981 in the amount of \$1,669.00, plus interest, together with the following explanation:

"[s]ince the boat claimed on Form IT-212 is used for charter fishing and not commercial fishing as stated in the New York State Tax Law, your investment credit has been disallowed."

5. On October 4, 1984, the Audit Division issued to petitioners a Notice of Deficiency asserting additional personal income tax due for 1981 in the amount of \$1,669.00, plus interest.

6. Petitioners timely protested the above Notice of Deficiency, maintaining the position that charter fishing is the equivalent of commercial fishing thus entitling petitioners to the claimed investment credit at issue herein.

CONCLUSIONS OF LAW

A. That Tax Law section 606(a) provides for a credit against personal income tax, based on the cost or other basis of:

"...tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing." (Emphasis added).


B. That there is no evidence to indicate the fishing vessel used in petitioners' charter fishing business was used in the production of goods as in commercial fishing. In fact, petitioners' Schedule C lists "services" (presumably making the vessel available for the purpose of sport fishing) as petitioner's main business activity (see Finding of Fact "3"). Accordingly, the Audit Division's denial of petitioners' claimed investment credit was proper.

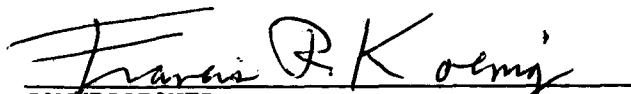
C. That the petition of Charles R. Watkins and Christine R. Watkins is hereby denied and the Notice of Deficiency dated October 4, 1984 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986


PRESIDENT


COMMISSIONER


COMMISSIONER