

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Michael G. August : AFFIDAVIT OF MAILING
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 1980, 1981 and 1982. :
:

State of New York :

ss.:

County of Albany :

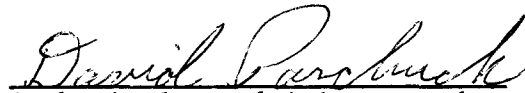
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 27th day of August, 1987, he/she served the within notice of Decision by certified mail upon Michael G. August the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

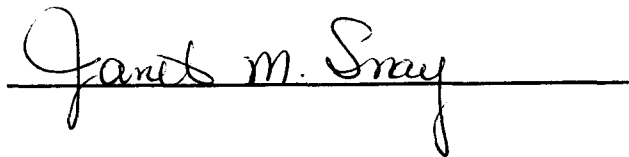
Michael G. August
726 Buffalo Avenue
Lindenhurst, NY 117572036

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
27th day of August, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

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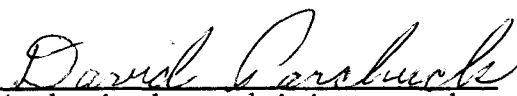
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 27th day of August, 1987, he served the within notice of Decision by certified mail upon Michael August, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

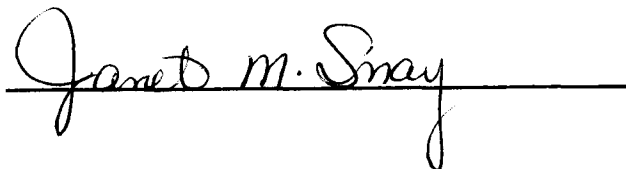
Michael August
726 Buffalo Avenue
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and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
27th day of August, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

August 27, 1987

Michael G. August
726 Buffalo Avenue
Lindenhurst, NY 117572036

Dear Mr. August:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Michael August
726 Buffalo Avenue
Lindenhurst, NY 117572036

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICHAEL G. AUGUST	:	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 1980, 1981 and 1982.	:	

Petitioner, Michael G. August, 726 Buffalo Avenue, Lindenhurst, New York, 11757-2036, 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 1980, 1981 and 1982 (File No. 64967).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 29, 1987 at 2:45 P.M. Petitioner appeared by his father, Michael August. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner is entitled to claim the New York State and City tax withheld from his wages as both a credit against tax and also as a payment of tax.

FINDINGS OF FACT

1. Petitioner herein, Michael G. August, timely filed New York State and City resident income tax returns for the years 1980, 1981 and 1982. The following table details the manner in which petitioner computed the refund due him on each of the returns filed for the years at issue:

	<u>1980</u>	<u>1981</u>	<u>1982</u>
New York State tax per table	\$159.00	\$191.00	\$229.00
Less: household credit	<u>35.00</u>	<u>35.00</u>	<u>40.00</u>
Total New York State tax due	<u>124.00</u>	<u>156.00</u>	<u>189.00</u>
New York City tax per table	<u>73.00</u>	<u>86.00</u>	<u>101.00</u>
Total State and City tax	<u>197.00</u>	<u>242.00</u>	<u>290.00</u>
Less: State and City tax withheld	<u>295.80</u>	<u>347.60</u>	<u>402.90</u>
Refund	<u>\$ 98.80</u>	<u>\$105.60</u>	<u>\$112.90</u>

2. Petitioner filed claims for refund for 1980, 1981 and 1982 wherein he asserted that no tax was due for said years and that he was therefore entitled to a full refund of all taxes paid on his returns. The computation of the refunds being sought by petitioner are summarized in the following table:

	<u>1980</u>	<u>1981</u>	<u>1982</u>
Total State and City tax due as shown on original returns	\$197.00	\$242.00	\$290.00
Less: State credit based on Internal Revenue Code § 31	<u>295.80</u>	<u>347.60</u>	<u>402.90</u>
Tax due after credits	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
State and City tax withheld from wages	<u>295.80</u>	<u>347.60</u>	<u>402.90</u>
Less: Amounts previously refunded	<u>98.80</u>	<u>105.60</u>	<u>112.90</u>
Refund	<u>\$197.00</u>	<u>\$242.00</u>	<u>\$290.00</u>

3. It is petitioner's position that the tax withheld from his wages can be claimed twice on his returns; first as a credit against tax pursuant to Internal Revenue Code § 31 (thus reducing his tax liability for the years at issue to zero) and, second, as a payment of tax. Mr. August asserts that he is entitled to the duplicative credit for New York State and City purposes pursuant to Tax Law § 607 and City Administrative Code § T46-107.0 which both provide

that any term used in the State and City Tax Law "shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required".

4. On April 23, 1984, the Audit Division issued a notice of disallowance to petitioner for 1980, 1981 and 1982 wherein his claims for refund of New York State taxes were disallowed in full. A second notice of disallowance was issued to petitioner on July 30, 1984, wherein his claims for refund of New York City taxes for 1980, 1981 and 1982 were also disallowed in full. Petitioner timely filed a petition with the State Tax Commission for refund.

5. Petitioner has filed similar claims for refund with the Internal Revenue Service for the years 1980, 1981 and 1982. Said claims for refund have been denied by the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That section 673 of the Tax Law and section T46-173.0 of the Administrative Code of the City of New York both provide that a taxpayer is entitled to credit for tax withheld from wages and that the amount of tax actually deducted and withheld during the year "shall be deemed to have been paid to the tax commission on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year" (emphasis added).

B. That Tax Law § 673 and Administrative Code § T46-173.0 each allow petitioner a credit as a payment for tax withheld from his wages. There are no sections in either Article 22 of the Tax Law or Chapter 46, Title T of the Administrative Code of the City of New York which would provide a basis for the duplicative credit petitioner seeks.


C. That Internal Revenue Code § 31 is inapplicable in the instant matter. Assuming, arguendo, that Internal Revenue Code § 31 is applicable, it is clear that petitioner has misconstrued the intent and application of said section.

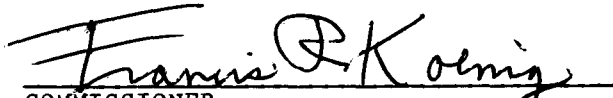
D. That the petition of Michael G. August is denied in its entirety and the notices of disallowance dated April 23, 1984 and July 30, 1984 are hereby sustained.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 27 1987


PRESIDENT


COMMISSIONER


COMMISSIONER