

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
William P. & Mae H. Herzstock :

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.  
\_\_\_\_\_ :

State of New York :

ss.:

County of Albany :

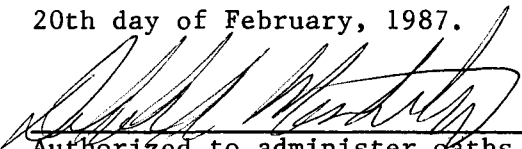
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of February, 1987, he/she served the within notice of Decision by certified mail upon William P. & Mae H. Herzstock the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

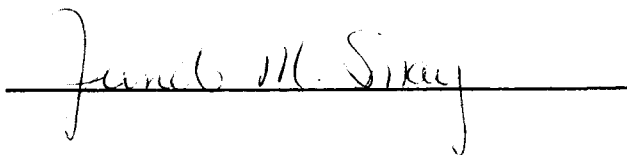
William P. & Mae H. Herzstock  
Box 387  
Wolfeboro Falls, NH 03896

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  
20th day of February, 1987.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_  
Janet M. Snay

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

February 20, 1987

William P. & Mae H. Herzstock  
Box 387  
Wolfeboro Falls, NH 03896

Dear Mr. & Mrs. Herzstock:

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	:	
WILLIAM P. HERZSTOCK AND MAE H. HERZSTOCK	:	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, William P. Herzstock and Mae H. Herzstock, Box 387, Wolfeboro Falls, New Hampshire 03896, 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. 53919).

A 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 October 23, 1986 at 9:15 A.M. Petitioner William P. Herzstock appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

#### ISSUE

Whether petitioner William P. Herzstock is properly entitled to claim an adjustment to income for New York State purposes where no such adjustment to income was claimed for Federal purposes.

#### FINDINGS OF FACT

1. William P. Herzstock (hereinafter "petitioner") and his wife, Mae H. Herzstock, filed a joint New York State Income Tax Resident Return for the year 1980 whereon petitioner claimed an adjustment to income for moving expenses of \$7,538.00. An adjustment to income for moving expenses was not claimed on petitioner's 1980 Federal return.

2. On August 29, 1983, the Audit Division issued a Statement of Audit Changes wherein petitioner's claimed adjustment to income of \$7,538.00 was disallowed. The effect of such disallowance was to increase his reported New York adjusted gross income of \$48,839.00 to \$56,377.00, the adjusted gross income reported on his Federal return. Accordingly, a Notice of Deficiency was issued against petitioner and his wife on April 12, 1984 asserting additional personal income tax of \$829.18, plus interest of \$296.74, for a total due of \$1,125.92.

3. Petitioner submitted a statement from his employer, Eastman Kodak Company, wherein it was stated that in 1980 he received a total relocation reimbursement of \$7,537.96.

4. Petitioner failed to claim the moving expense adjustment on his 1980 Federal return due to his misinterpretation of the tax law. He believes that since he was properly entitled to claim said adjustment on his Federal return, his failure to do so should not affect the treatment of such adjustment for New York State purposes.

#### CONCLUSIONS OF LAW

A. That section 612 of the Tax Law provides:

"(a) General. The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

B. That section 612 of the Tax Law provides no modifications which may serve to reduce petitioner's Federal adjusted gross income (on his New York State return) by amounts of deductions or adjustments to income which petitioner inadvertently failed to claim on his Federal return.

C. That the petition of William P. Herzstock and Mae H. Herzstock is denied and the Notice of Deficiency issued April 12, 1984 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1987

Roderick W. Allen  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

[Signature]  
COMMISSIONER