

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John F. Mullen : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
Refund of New York State and New York City :
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 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 1st day of July, 1987, he/she served the within notice of Decision by certified mail upon John F. Mullen the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John F. Mullen
136 Noble Street
Brooklyn, NY 11222

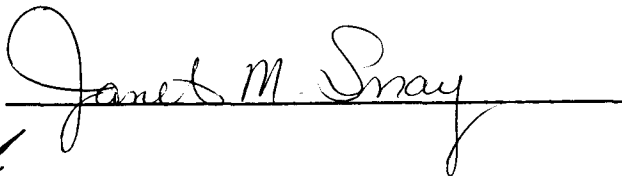
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
1st day of July, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



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

July 1, 1987

John F. Mullen
136 Noble Street
Brooklyn, NY 11222

Dear Mr. Mullen:

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) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

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JOHN F. MULLEN	:	DECISION
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Refund of New York State and New York City	:	
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Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the Year 1981.	:	

Petitioner, John F. Mullen, 136 Noble Street, Brooklyn, New York 11222, filed a petition for redetermination of a deficiency or for refund of New York State and New York City 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 1981 (File No. 62370).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 11, 1987 at 10:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Audit Division improperly determined an additional deficiency against petitioner based on information received from the Internal Revenue Service, after having previously issued to petitioner a Notice and Demand for Tax Due for a deficiency determined on an altogether different basis.

FINDINGS OF FACT

1. On April 5, 1985, the Audit Division issued to petitioner, John F. Mullen, a Notice of Deficiency for the year 1981, asserting additional New York State and City income tax due of \$640.50 plus interest. No penalty was imposed.

2. A Statement of Audit Changes issued to Mr. Mullen on July 25, 1984 explained that information obtained by the Audit Division from the Internal Revenue Service had resulted in a \$3,500.00 increase in Mr. Mullen's taxable income and a recomputation of his tax liability for 1981:

(a) An adjustment was made to Mr. Mullen's New York itemized deductions because he had subtracted only a portion of the State and local taxes included in Federal itemized deductions rather than the full amount as required.

(b) A capital loss of \$3,000.00 was disallowed.

3. Mr. Mullen conceded that the adjustments were proper, and he paid all tax and interest due following a Tax Appeals conference. He did so, however, under protest.

4. On September 30, 1982, the Audit Division issued to Mr. Mullen a Notice and Demand for Tax Due for 1981, showing a balance due of \$448.14. The balance due resulted from a mathematical recalculation of Mr. Mullen's return. He paid this assessment on October 13, 1982. Mr. Mullen now takes the position that having assessed him once for taxes due in 1981, the Audit Division was barred from assessing additional taxes for the same tax year. He also claimed that the Notice of Deficiency was barred by the statute of limitations.

CONCLUSIONS OF LAW

A. That Tax Law § 681(d) provides that if a mathematical error appears on the face of a return, the Tax Commission shall notify the taxpayer that a tax

is due in excess of that amount shown upon the return. Such notice is not considered a Notice of Deficiency. Furthermore, the amount of tax which a return would have shown to be due but for a mathematical error is deemed to be assessed on the date of filing of the return (Tax Law § 682[a]). The Notice and Demand for Tax Due issued to petitioner on September 30, 1982 was properly issued under these provisions of the statute.


B. That petitioner has conceded that his 1981 taxable income was incorrectly reported; however, he challenges the authority of the Tax Commission to issue such a notice after previously assessing taxes for the same year. As explained above, the notice issued on September 30, 1982 was not a Notice of Deficiency. It was issued as the result of a mathematical error apparent on the face of petitioner's return. The Notice of Deficiency resulted from the Audit Division's review of information provided by the Internal Revenue Service. It was based on the Audit Division's determination that a deficiency existed because petitioner had incorrectly calculated his taxable income for 1981. The Notice of Deficiency was issued properly within the three year period of limitation set forth at Tax Law § 683(a). There is no statutory authority preventing the Tax Commission from issuing more than one determination of tax liability for the same year. In the absence of such authority, the State cannot be prevented from collecting taxes lawfully imposed (see Matter of McMahan v. State Tax Commission, 45 AD2d 624, lv denied 36 NY2d 646).

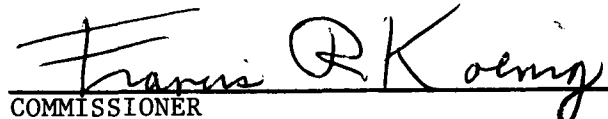
C. That the petition of John F. Mullen is denied, and the Notice of Deficiency issued on April 5, 1985 is sustained.

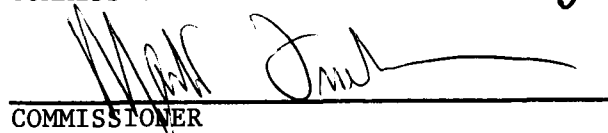
DATED: Albany, New York

STATE TAX COMMISSION

JUL 01 1987.


PRESIDENT


COMMISSIONER


COMMISSIONER