

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES B. & CAROL A. KENNING:

For a Redetermination of a Deficiency or  
a Refund of Personal Income :  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1963, 1964, 1967  
and 1968.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 1st day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Charles B. & Carol A. Kenning (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Charles B. & Carol A. Kenning, c/o Kaufman, Kenning, Tyle & Pauley 1001-1003 Times Square Bldg. 45 Exchange Street Rochester, N.Y. 14614 and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

1st day of March, 1972

Martha Furano

Rae Zimmerman



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

March 1, 1972

Charles B. & Carol A. Kenning  
c/o Kaufman, Kenning, Tyle & Pauley  
1001-1003 Times Square Bldg.  
45 Exchange Street  
Rochester, N.Y. 14614

Dear Sir and Madam:

Please take notice of the **Decision** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **four months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**L. Robert Leisner**

HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :

of :

CHARLES B. & CAROL A. KENNING : DECISION

for a Redetermination of a Deficiency or :  
for Refund of Personal Income Taxes  
under Article 22 of the Tax Law for the :  
Years 1963, 1964, 1967 and 1968.

---

Charles B. and Carol A. Kenning petitioned for a redetermination of a deficiency in personal income taxes under Article 22 of the Tax Law for the years 1963, 1964, 1967 and 1968. A formal hearing was held at the offices of the State Tax Commission, Rochester, New York, on July 13, 1971, before L. Robert Leisner, Hearing Officer. Charles B. Kenning, Esq., appeared on behalf of the taxpayers and the Income Tax Bureau was represented by Edward H. Best, Esq., Alexander Weiss, Esq., of Counsel).

#### ISSUES

The only questions raised by the taxpayers are the legality of the determination under the Tax Law, and the constitutionality of the New York Tax Law, section 612(f), which does not permit married taxpayers to file a joint return splitting income as in the case of the Federal Tax Law.

#### FINDINGS OF FACT

1. The Income Tax Bureau issued a Notice of Deficiency against the taxpayers for the years 1963 and 1964, under file number 29229696, a Notice of Deficiency for the year 1967 under file number 7-78484636, and for the year 1968 under file number 8-18528022.

2. The taxpayers timely filed petitions for the years 1963, 1964, 1967 and 1968, seeking a redetermination of the deficiencies and demanding a hearing.

3. The taxpayers, husband and wife, filed joint returns for the years in issue, splitting the income of the husband and wife, and the Income Tax Bureau issued notices of deficiency on the grounds that New York Tax Law does not permit the splitting of income by the husband and wife as does the Internal Revenue Code in the case of a joint return.

CONCLUSIONS OF LAW

A. The splitting of income as attempted by the husband and wife is not allowable under New York Tax Law. The determination disallowing the splitting of income is in accord with the Tax Law.

B. Section 612(f) of the Tax Law does not violate the State or Federal Constitutions.

C. The petitions are denied for all of the years in issue, and the determinations of deficiencies herein for the years 1963, 1964, 1967 and 1968 are sustained.

D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York

STATE TAX COMMISSION

*Norman Gelman*  
\_\_\_\_\_  
COMMISSIONER

*Abigail Mauley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Korman*  
\_\_\_\_\_  
COMMISSIONER

*March 1, 1972*