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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

J. F. BAXTER, JR.

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

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) 1964

State of New York
County of Albany

Martha Funaro , 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 18th day of July , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon J. F. Baxter, Jr.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. J. F. Baxter, Jr.
73 Longview Road
Port Washington, New York 11050

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

18th day of July , 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

July 18, 1974

Mr. J. F. Baxter, Jr.
73 Longview Road
Port Washington, New York 11050

Dear Mr. Baxter:

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

Please take further notice that pursuant to
Section(s) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
J. F. BAXTER, JR. : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1964. :
:

Petitioner, J. F. Baxter, Jr., has filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1964. (File No. 89858138).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on Thursday, December 13, 1973, at 1:00 P.M. Petitioner, J. F. Baxter, Jr., appeared himself. The Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did petitioner, J. F. Baxter, Jr., timely file his claim for a refund for the year 1964?

FINDINGS OF FACT

1. In 1964, petitioner, J. F. Baxter, Jr., had New York personal income taxes withheld from his salary. Petitioner filed no tax return for said year.

2. On Friday, April 16, 1968, petitioner filed a New York State tax return in which he claimed a refund of \$102.80 of the taxes withheld in 1964.

CONCLUSIONS OF LAW

A. A claim for refund must be made within three years of the filing of a timely return or two years from the payment of a tax, and such refund is limited to any amount paid within such three or two year period. (Tax Law, section 687(a)). In this case, the claim is patently beyond the two year payment time limitation. It is also beyond the three year limitation because under section 691 of the Tax Law, the date of postmark is the controlling date. (Tax Law section 691). Even if a 1964 return was filed now, said return would not be filed under a valid extension of time and would not be timely. The result is that the three year period is deemed to have started on April 15, 1965, and expired April 15, 1968. That expiration date is one day prior to the filing of the claim made in this case. There is thus no statutory authority for granting a refund in this case.

B. The claim of petitioner, J. F. Baxter, Jr., for a refund for the year 1964 is denied.

DATED: Albany, New York
July 18, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER