

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
IRVING MILLER and LILLIAN MILLER :

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(x) 22 of the
Tax Law for the (Year(s) 1963, 1964, 1965
and 1966.

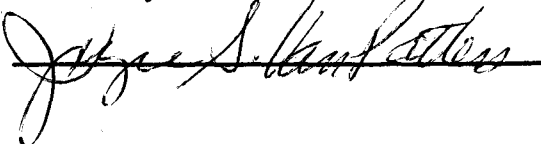
State of New York
County of Albany

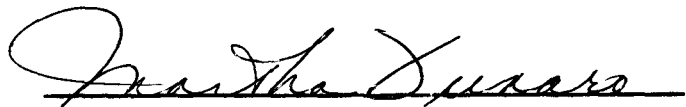
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of June , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving Miller
and Lillian Miller (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Irving Miller
2230 Cruger Avenue, Apt. #3-J
Bronx, New York 10467
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

25th day of June , 19 74







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
June 25, 1974

Mr. and Mrs. Irving Miller
2230 Cruger Avenue, Apt. #3-J
Bronx, New York 10467

Dear Mr. and Mrs. Miller:

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

Please take further notice that pursuant to
Section (~~2~~) 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,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
IRVING MILLER and LILLIAN MILLER : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1963, 1964, 1965 and 1966. :

Petitioners, Irving Miller and Lillian Miller, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1963, 1964, 1965 and 1966. A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on April 16, 1974, at 10:45 A.M. Petitioner, Irving Miller, appeared pro se and for his wife, Lillian Miller. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Were petitioners, Irving Miller and Lillian Miller, entitled to a refund of New York State personal income taxes paid on New York City Fire Department Pension Fund payments erroneously included in their New York income for the years 1963, 1964, 1965 and 1966, where their claims for refund were filed more than three years from the time the tax returns were filed and more than two years from the time the tax was paid?

FINDINGS OF FACT

1. Petitioners, Irving Miller and Lillian Miller, filed New York State combined income tax returns for the year 1963 on April 6, 1964, for the year 1964 on April 5, 1965, for the

year 1965 on April 10, 1966 and for the year 1966 on April 7, 1967. On their 1963 return, they listed on said return, pension and annuity income received by petitioner, Irving Miller, of \$2,350.50 but did not state its source. On their 1964, 1965 and 1966 returns, they listed income received by him on Schedule A, line 4 of \$4,018.68, \$4,125.02 and \$4,857.95 respectively, but did not state its source. They did not exclude any of said income from total New York income on said returns.

2. On or about May 27, 1971, petitioners, Irving Miller and Lillian Miller, filed amended New York State combined income tax returns for the years 1963, 1964, 1965 and 1966, in which they subtracted from total income, pension payments received by petitioner, Irving Miller, from the New York City Fire Department Pension Fund. Simultaneously, they filed claims for credit or refund of personal income tax for said years based upon the exclusion of said pension payments from total New York income reported. They claimed a refund of \$86.68 for the year 1963, \$166.08 for the year 1964, \$165.77 for the year 1965 and \$195.29 for the year 1966. The claims for refund were filed more than three years from the time the tax returns were filed and more than two years from the time the tax was paid.

3. On September 29, 1971, the Income Tax Bureau denied petitioners, Irving Miller and Lillian Miller's claims for refund for the years 1963, 1964, 1965 and 1966 upon the grounds that said claims for refund were not timely filed pursuant to section 687 of the Tax Law.

4. Petitioner, Irving Miller, received pension payments from the New York City Fire Department Pension Fund of \$2,350.50 in 1963, and \$3,938.40 in 1964, 1965 and 1966. They included said pension payments in their New York income in error.

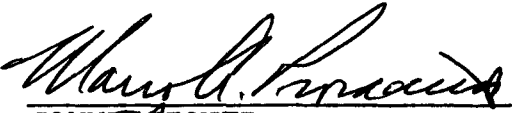


CONCLUSIONS OF LAW

A. That the pension payments received by petitioner, Irving Miller, from the New York Fire Department Pension Fund, as a retired employee of the New York City Fire Department during the years 1963, 1964, 1965 and 1966, were pension payments paid to an employee of a subdivision of New York State in accordance with the meaning and intent of section 612(c)(3) of the Tax Law; that such pension payments were included in their New York income for said years on their returns and personal income tax paid thereon under a mistake of fact within the meaning and intent of section 697(d) of the Tax Law; that their claims for refund of said overpayments involve no questions of law and fact in accordance with the meaning and intent of said section; and, therefore, the State Tax Commission at any time, without regard to the period of limitation provided for in section 687(a) of the Tax Law, shall have the power to grant said refund in accordance with the meaning and intent of section 697(d) of the Tax Law.

B. That the petition and claims for refund of Irving Miller and Lillian Miller are granted and the Income Tax Bureau is hereby directed to refund to them the sums of \$86.68 for the year 1963, \$166.08 for the year 1964, \$165.77 for the year 1965 and \$195.29 for the year 1966, together with such interest as may be lawfully payable.

DATED: Albany, New York
June 25, 1974

STATE TAX COMMISSION


COMMISSIONER

COMMISSIONER

COMMISSIONER