

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES B. KENNING and

CAROL M. KENNING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article ~~(s)~~ 22 of the  
Tax Law for the Year(s) ~~or Period(s)~~ 1965,  
1966, 1969, 1970, 1971 and 1972.

AFFIDAVIT OF MAILING

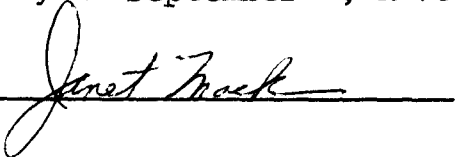
State of New York  
County of Albany


Catherine Steele, 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 13th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Charles B. Kenning and Carol M. Kenning (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Charles B. Kenning  
23 Old Farm Circle  
Pittsford, New York 14534  
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 Postal Service within the State of New York.

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

13th day of September, 1976







TELEPHONE: (518) **457-3850**

Mr. & Mrs. Charles B. Kenning  
23 Old Farm Circle  
Pittsford, New York 14534

**Dear Mr. & Mrs. Kenning:**

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

Please take further notice that pursuant to Section ~~726~~ **690** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **4 months** from the date of this notice.

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. They will be referred to the proper party for reply.

Very truly yours,

**Paul B. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

**XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX:**

**Taxing Bureau's Representative:**

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CHARLES B. KENNING AND	:	DECISION
CAROL M. KENNING	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Years 1965, 1966, 1969, 1970, 1971 and	:	
1972.	:	

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Petitioners, Charles B. Kenning and Carol M. Kenning, 23 Old Farm Circle, Pittsford, New York 14534, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1965, 1966, 1969, 1970, 1971 and 1972.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York on October 15, 1975 before L. Robert Leisner, Hearing Officer. The taxpayers appeared by Charles B. Kenning, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

- I. Were the taxpayers entitled to income splitting?
- II. Are sections 612(f) and 615(b)(2) of the Tax Law constitutional?

FINDINGS OF FACT

1. Petitioners, Charles B. Kenning and Carol M. Kenning, timely filed New York State income tax returns for the years 1965, 1966, 1969, 1970, 1971 and 1972.

2. A Notice of Deficiency in personal income taxes were issued for the years 1969 on April 10, 1971; for 1970 and 1971 on December 5, 1972; and for 1972 on April 12, 1974, against the taxpayers under File Nos. 9-38729633; No. 1-78918288; and No. 2-25824056.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. At the hearing the taxpayers also attempted to place in issue refund claims for the years 1965 and 1966. The Income Tax Bureau asserted a decision of the State Tax Commission affirmed by the Appellate Division for the years 1965 and 1966, Kenning vs. Tax Commission 69 Misc 2d 484, barred their claims for refund for said years.

5. The taxpayers assert that the assessments violate the equal protection clause of the United States Constitution. They assert that two married persons both with separate income may file a joint return indirectly but two married persons with only the husband or wife with income, cannot split income and thus this couple is deprived of equal protection of the law.

6. The taxpayers assert that the commitment of \$1,800,000.00 to the South Mall project without referendum and the illegal allocation of funds from the stock transfer tax to New York City has made the assessment unconstitutional, and that excessive inflation has created a confiscatory New York State income tax.

7. The taxpayers assert that the exodus of people and industry from New York State has increased the tax burden on the remaining citizens in New York State and the tax burden on income must be revised.

8. The taxpayers assert that in several instances they had joint income and joint property and that in the assessments the Income Tax Bureau has also failed to recognize this in the case of Carol M. Kenning. They assert this income cannot be allocated to Charles B. Kenning alone.

The taxpayers had joint income in the form of interest and recapture of depreciation.

	1969	1970	1971	1972
Interest	\$ 890.06	\$1,139.13	\$1,362.16	\$1,483.37
Depreciation	1,287.22			
Recapture	\$2,177.28			

9. The taxpayers assert that sections 612(f) and 615(b)(2) are contrary to the provisions of Article 3 section 22 of the Constitution and contrary to the intentions of the voters when these sections of the Constitution were adopted and contrary to the intentions of the New York State Legislature in implementing the same.

10. They assert that the statutory appeal provisions provided for in the New York Tax Law violate the due process clause and equal protection clause of the United States Constitution and also violate the Civil Rights Statutes of the United States.

#### CONCLUSIONS OF LAW

A. That the petitioners' cases for 1965 and 1966 were finally determined in Kenning vs. Tax Commission 69 Misc 2d 484. The petitions for 1965 and 1966 are dismissed under section 689(c)(2) of the Tax Law.

B. That respecting the assertions of unconstitutionality, the State Tax Commission has no jurisdiction to declare a Tax Law unconstitutional. The constitutionality of the Tax Law is presumed at the administrative level of adjudication.

C. That respecting the assertions of confiscatory rates in an inflationary economy, or the assertion of an exodus of industry, or many people from the State, the Tax Law does not provide for such events, and relief if any must come from the legislature.

D. That respecting the assertion of income splitting the Tax Law does not provide that a spouse may split income with the other spouse on the tax return. The controlling law, section 612(f) of the Tax Law, requires that adjusted gross income of the husband and wife must be determined separately. Section 615(b)(2) of the Tax Law provides that itemized deductions of a husband and wife may be taken by either or divided between them as they may elect.

E. The taxpayers had joint income in the form of interest and recapture of depreciation.

	1969	1970	1971	1972
Interest	\$ 890.06	\$1,139.13	\$1,362.16	\$1,483.37
Depreciation	1,287.22			
Recapture	\$2,177.28			

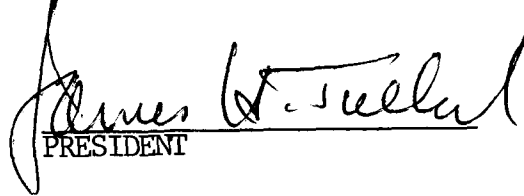
F. That half of this joint income from each year is the separate income of Carol M. Kenning and the income tax due shall be recomputed on this separate income. Charles B. Kenning's income shall be reduced by one half the joint income and the tax on his separate income shall be

recomputed. The deficiencies as modified are sustained for the years 1969, 1970, 1971 and 1972. The taxpayers petitions in all other respects are denied.

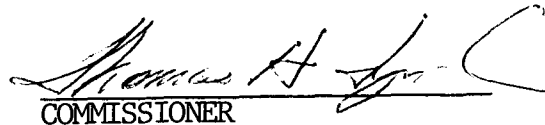
G. That pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York  
September 13, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER