

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles A. & Nona B. Frankenhoff :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1965,1966. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1979, he served the within notice of Decision by certified mail upon Charles A. & Nona B. Frankenhoff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles A. & Nona B. Frankenhoff
6 Hathaway Road
Scarsdale, NY 10583

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of December, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles A. & Nona B. Frankenhoff :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1965,1966. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1979, he served the within notice of Decision by certified mail upon Jack Tannenbaum the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Jack Tannenbaum
521 Fifth Ave., Suite 1418
New York, NY 10017

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 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
14th day of December, 1979.

Joanne Knapp

J. Vredenburg

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

December 14, 1979

Charles A. & Nona B. Frankenhoff
6 Hathaway Road
Scarsdale, NY 10583

Dear Mr. & Mrs. Frankenhoff:

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 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jack Tannenbaum
521 Fifth Ave., Suite 1418
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES A. FRANKENHOFF and NONA B. FRANKENHOFF : DECISION :
for Redetermination of Deficiencies or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1965, 1966, 1967, :
1968, 1969 and 1970. :

Petitioners, Charles A. and Nona B. Frankenhoff, 6 Hathaway Road, Scarsdale, New York 10583, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1965 through 1970 (File Nos. 14858 and 20933).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 9, 1979 at 1:15 P.M. Petitioner appeared by Jack Tannenbaum, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether the notices of deficiency were properly issued.

FINDINGS OF FACT

1. Petitioners, Charles A. and Nona B. Frankenhoff, timely filed New York State resident returns for the years 1965 through 1970.

2. In accordance with stipulations which the Income Tax Bureau and petitioners orally agreed to, the following facts were ascertained:

(a) The Internal Revenue Service audited the Federal income tax returns of petitioners, Charles A. and Nona B. Frankenhoff, for the years 1965 through 1970.

(b) A waiver was signed by petitioners which extended the period of assessment by the Internal Revenue Service.

(c) A final determination was issued by the Internal Revenue Service sometime after April 15, 1974.

3. Petitioner did not file an IT-115 to report the changes of Federal taxable income to the New York State Income Tax Bureau for the years 1965 through 1970.

4. The Income Tax Bureau issued notices of additional tax due for the years 1965 through 1970, and petitioners protested said notices. The letters of protest were accepted without a report of Federal audit changes as required under section 681(e) of the Tax Law, to allow the issuance of deficiencies and the filing of subsequent petitions.

5. On November 24, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner Nona B. Frankenhoff, recomputing her New York State personal income tax liability for 1965 and 1966, based on the unreported Federal audit changes. On February 24, 1976, this Notice of Deficiency was reissued against both Charles A. and Nona B. Frankenhoff.

6. On September 26, 1977, the Income Tax Bureau issued a Notice of Deficiency against both petitioners, recomputing their New York State personal income tax liability for the years 1967 through 1970, based on unreported Federal audit changes.

7. Petitioners argued that they were not required to report the Federal audit changes for the years 1965 through 1970, in accordance with section 659 of the Tax Law, since these changes were finalized after the three-year period expired under section 683 of the Tax Law.

CONCLUSIONS OF LAW

A. That section 659 of the Tax Law prescribes that if a taxpayer's

Federal taxable income "for any taxable year (emphasis added) is changed or corrected by the United States Internal Revenue Service," the taxpayer shall report such changes or correction "within ninety days after the final determination" of such change.

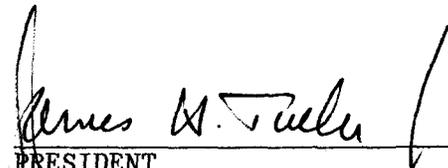
B. That petitioners, Charles A. and Nona B. Frankenhoff, failed to comply with section 659 of the Tax Law. Any taxes due as a result of said failure may be assessed at any time, in accordance with the meaning and intent of section 683(c) of the Tax Law.

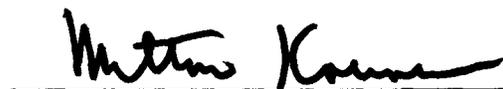
C. That the notices of deficiency dated February 24, 1976 and September 26, 1977, were properly issued within the purview of section 681(e) of the Tax Law.

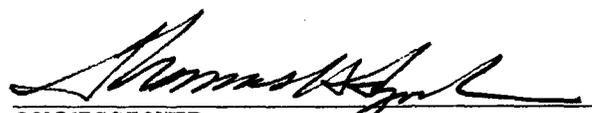
D. That the petition of Charles A. and Nona B. Frankenhoff is denied and the notices of deficiency issued on February 24, 1976 and September 26, 1977 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
DEC 14 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER