

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
William E. & Allen C. Hollan :
Reynolds & Co. : AFFIDAVIT OF MAILING
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 1966 - 1971. :

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 17th day of August, 1979, he served the within notice of Decision by certified mail upon William E. & Allen C. Hollan, Reynolds & Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William E. & Allen C. Hollan
Reynolds & Co.
616 N. Stratford Rd.
Winston-Salem, NC 27104

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
17th day of August, 1979.

Victoria Gary

Jay Vredenburg



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

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

William E. & Allen C. Hollan
Reynolds & Co.
616 N. Stratford Rd.
Winston-Salem, NC 27104

Gentlemen:

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM E. HOLLAN and ALLAN C. HOLLAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1966 through 1971.	:	

Petitioners, William E. Hollan and Allan C. Hollan, 616 North Stratford Road, Winston-Salem, North Carolina 27104, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1966 through 1971 (File No. 12325).

On July 25, 1978, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of the record, the Commission renders the following decision.

ISSUES

I. Whether interest based on the deficiency in tax may be waived.

II. Whether the penalty for failure to make payments of estimated tax was properly imposed against petitioners.

FINDINGS OF FACT

1. Petitioners, William E. Hollan and Allan C. Hollan, timely filed New York State income tax nonresident returns for the years 1966 through 1971.

2. On October 12, 1973, the Income Tax Bureau notified petitioners that their income taxes were not sufficiently paid throughout 1971, by means of withholding and/or estimated tax payments and that, as a result, they were liable for a penalty under section 685(c) of the Tax Law. The letter was accompanied by a "Statement Relating to Underpayment of Estimated Income Tax by Individuals" (Form IT-2334), which was completed by petitioners and returned to the Income Tax Bureau with a remittance of \$126.89. Said payment was recorded on October 29, 1973.

3. On January 17, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, William E. Hollan and Allan C. Hollan, for the years 1966 through 1971, asserting additional personal income tax of \$854.05, plus interest of \$220.59 and penalty of \$126.81, for the underpayment of estimated tax for 1971. This was done as a result of an audit of the partnership of Reynolds & Co., of which petitioner William E. Hollan was a member partner. The adjustment for 1966 resulted in an over-assessment of tax of \$20.41. On April 11, 1975, the Income Tax Bureau issued a Notice of Deficiency showing total tax, penalty and interest due of \$1,181.04.

4. On September 24, 1973, the Income Tax Bureau began the audit of petitioner's tax return and on March 14, 1975, completed said audit. The Income Tax Bureau had requested (on eight occasions) that petitioners sign a "Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes" for the years at issue.

5. Petitioners contended that interest should be waived, since the audit of their return was not completed within a reasonable period of time and that said delay was not their fault.

6. Petitioner William E. Hollan contended that the underpayment of estimated tax for 1971 was not due to negligence, since there was no way of knowing what his distributive share of New York income was until the close of the partnership's tax year.

CONCLUSIONS OF LAW

A. That the Income Tax Bureau properly imposed interest on the deficiency, in accordance with section 684 of the Tax Law. There is no provision in the Tax Law for the waiver of interest on the underpayment of tax.

B. That the underpayment penalty imposed pursuant to section 685(c) of the Tax Law, for failure to make payments of estimated tax during 1971, was proper since petitioners did not qualify under any of the exceptions prescribed in section 685(d) of the Tax Law.

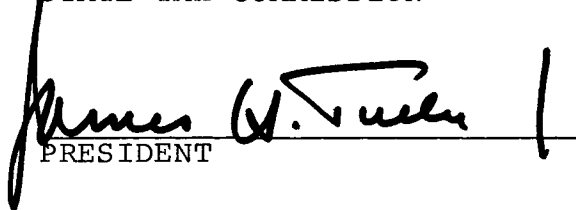
C. That the penalty under section 685(c) of the Tax Law should be deleted from the Notice of Deficiency, since petitioner paid said penalty on October 29, 1973.

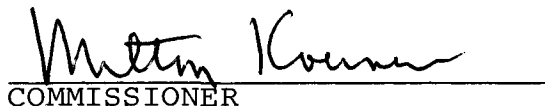
D. That the petition of William E. Hollan and Allan C. Hollan is granted to the extent indicated in Conclusion of Law "C", supra, and that, except as so granted, the petition is in all other respects denied.

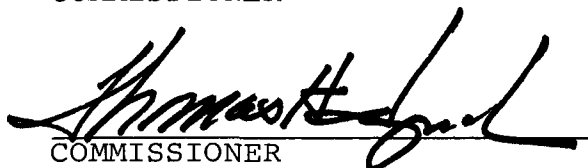
DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER