

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Allan V. & Gladys V. Olson :

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 Year 1970. :

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 31st day of August, 1979, he served the within notice of Decision by certified mail upon Allan V. & Gladys V. Olson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allan V. & Gladys V. Olson

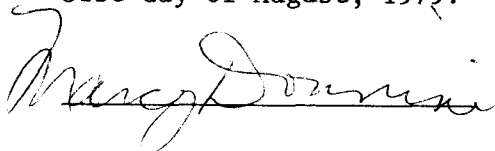
RFD Box 260

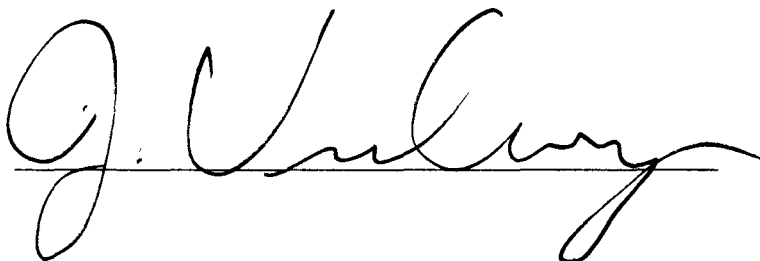
Southampton, NY 11968

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  
31st day of August, 1979.







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 31, 1979

Allan V. & Gladys V. Olson  
RFD Box 260  
Bayview Oaks  
Southampton, NY 11968

Dear Mr. & Mrs. Olson:

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, reading "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 :

ALLAN V. OLSON AND GLADYS V. OLSON :

DECISION

for Redetermination of a Deficiency :  
or for Refund of Personal Income Tax  
under Article 22 of the Tax Law for :  
the Year 1970.

Petitioners, Allan V. Olson and Gladys V. Olson, RFD Box 260, Bayview Oaks, Southampton, New York 11968, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970 (File No. 14186).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1978 at 2:45 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Robert Felix, Esq., of counsel).

ISSUES

I. Whether the portion of a lump-sum payment from an employee retirement benefit trust fund, earned by the trust from investments it made outside New York State, was subject to personal income tax.

II. Whether the interest due on personal income tax should be waived because of the length of time which elapsed between the filing of the tax return and the issuance of the Notice of Deficiency.

FINDINGS OF FACT

1. Petitioner Gladys V. Olson timely filed a New York State personal income tax resident return for 1970, on which she reported only her wage income of \$1,040.00 earned in New York State, and on which she indicated her filing status as "single." Her husband, petitioner Allan V. Olson, did not file a New York State personal income tax return.

2. A Federal-State Tape Match disclosed that petitioners had reported Federal adjusted gross income of \$37,699.36. On January 26, 1976, after correspondence and a conference with petitioners, the Income Tax Bureau issued a Notice of Deficiency to them, asserting \$3,762.70 in personal income tax, plus \$989.67 in interest, for a total of \$4,752.37. Petitioners paid \$3,400.74 in personal income tax, leaving a balance of \$361.96 (which constituted minimum tax on items of tax preference), plus \$989.67 in interest, for a total due of \$1,351.63. Petitioners did not contest the minimum income tax and said amount is not at issue.

3. Petitioners were nonresidents until May of 1970, when they became residents of New York State. Petitioner Allan V. Olson worked solely within New York State for William Esty Company, Inc. for twenty-three years, until the end of 1969. Upon termination of his employment, he received a lump-sum, retirement benefit payment which he reported on his 1970 Federal tax return, but which he did not report for New York State personal income tax purposes.

4. The amount of the retirement benefit received by petitioner Allan V. Olson was based on his earnings and years of service. His employer contributed 15% of his annual earnings to an employee trust fund, which also included forfeited monies of other employees who left service or retired early, as well as earnings of the fund through investments. The trust invested most of its funds in the stock of R. J. Reynolds Tobacco Co. of Winston Salem, North Carolina, and received dividend income therefrom.

5. Petitioners conceded that the employee-retirement-benefit payment was taxable for New York State personal income tax purposes, except for that portion of the payment (represented by dividends) which was earned by the trust from sources without New York. Petitioners also contended that interest should be waived because the Income Tax Bureau was negligent in not bringing the case to a speedy conclusion, thereby allowing the interest to accumulate.

#### CONCLUSIONS OF LAW

A. That the lump-sum payment received by petitioner Allan V. Olson constituted compensation for past services performed in New York State as an employee of William Esty Company, Inc., and did not represent dividends received; therefore, said payment was taxable for New York State personal income tax purposes, in accordance with the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.4(d).

B. That interest was properly imposed by the Income Tax Bureau, pursuant to section 684 of the Tax Law. There is no

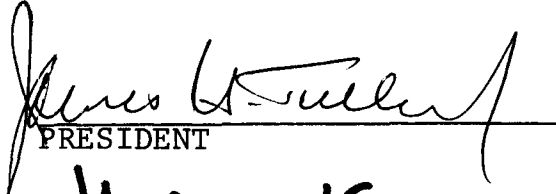
statutory authority in the Tax Law allowing for the waiver of interest.

C. That the petition of Allan V. Olson and Gladys V. Olson is denied and the Notice of Deficiency issued January 26, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER