

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ROBERT H. AND HANNA H. SABEL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1981.	:	

Petitioners, Robert H. Sabel and Hanna H. Sabel, c/o Iwanyshyn, Kesich & Co., 834 Ridge Avenue, Pittsburgh, Pennsylvania 15212, made a motion before the Tax Appeals Tribunal to sever the Division of Taxation's request that petitioners' exception be dismissed from the argument concerning the substantive issues of the exceptions.

ISSUE

Whether petitioners' motion to sever the Division's request that petitioners' exception be dismissed from the substantive issues of the exceptions should be granted.

FINDINGS OF FACT

The Administrative Law Judge issued a determination on October 20, 1988 with respect to the petition of petitioners, Robert H. Sabel and Hanna H. Sabel. On October 27, 1988 the Tax Appeals Tribunal granted petitioners' request for an extension of time to file a notice of exception until December 19, 1988. On November 16, 1988 the Tribunal granted the Division of Taxation an extension until December 16, 1988 to file an exception. On December 14, 1988 petitioners filed a notice of exception with the Tax Appeals Tribunal. On December 19, 1988 the Tax Appeals Tribunal received a notice of exception from the Division of Taxation. On January 17, 1989 the Tax Appeals Tribunal received a brief from petitioners in support of their exception. On February 21, 1989 the Tax Appeals Tribunal received a brief from the Division in support of its notice of exception. In addition, the Division's brief contained a request that petitioners' notice of exception be dismissed for failure to serve a copy of the exception on the Division. On

March 27, 1989, pursuant to an extension granted by letter dated March 13, 1989, the Tax Appeals Tribunal received petitioners' brief in opposition to the Division's brief, which addressed the substantive arguments and the request for dismissal. On April 7, 1989 the Tax Appeals Tribunal received petitioners' notice of motion to sever the Division's request to dismiss petitioners' notice of exception from the substantive issues raised in the parties' exceptions.

OPINION

Petitioners' motion to sever the argument concerning the Division's request that petitioners' notice of exception be dismissed from the argument concerning the substantive issues raised in the exceptions of the parties is granted. The Division's request will be treated as a motion to dismiss and will be decided separately. Oral argument will not be heard on such motion.

Accordingly, petitioners' motion to sever is granted and the motion to dismiss will be decided by the Tribunal on the papers previously submitted.

DATED: Troy, New York
October 5, 1989

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner