

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

JAMES TESTA AND CLAIRE TESTA

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article  
22 of the Tax Law for the Year 1978.

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Petitioners, James Testa and Claire Testa, 20 Amesworth Court, Middle Island, New York 11953, 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 1978 (File No. 39165).

On July 25, 1985, petitioners advised the State Tax Commission, in writing, that they desired to waive a formal hearing and submit the case to the State Tax Commission upon the entire record contained in the file, with submission of additional evidence and documents by September 30, 1985. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether the Audit Division properly determined petitioners' 1978 income based on the bank deposits method of income reconstruction.

FINDINGS OF FACT

1. James Testa and Claire Testa (hereinafter "petitioners") timely filed a joint New York State Income Tax Resident Return for the year 1978 whereon they reported total income of \$5,715.00, comprised of wages reported by Mr. Testa of \$5,330.00 and interest income of \$385.00.

2. On February 26, 1982, the Special Investigations Bureau of the Audit Division issued a State Tax Commission

result of a field audit, their 1978 gross income was determined to be \$31,692.53. Accordingly, a Notice of Deficiency was issued against petitioners on April 7, 1982 asserting personal income tax of \$2,296.95, plus interest of \$684.80, for a total due of \$2,981.75.

3. Information received by the Special Investigations Bureau indicated, inter alia, that Mr. Testa received a substantial sum of cash off the books from his employer during the year at issue. Based on such information, the Audit Division decided to examine petitioners' bank deposits. Such examination revealed that petitioners made total deposits of \$31,692.53 during 1978. This amount was determined to be their gross income for said year.

4. Petitioners alleged that the aforestated bank deposits represented loan repayments from one Theodore Koryowski. The file contains no documentation to support such allegation.

#### CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law provides that in any case before the Tax Commission, the burden of proof shall be upon the petitioner except for three issues, none of which are present in the instant case.

B. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law, to show that their bank deposits represented loan repayments.


C. That the petition of James Testa and Claire Testa is denied and the Notice of Deficiency issued April 7, 1982 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

**MAR 27 1986**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER