

STATE OF NEW YORK

STATE **TAX** COMMISSION

In the Matter of the Petition

of

GAIL MARKOWITZ

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter 46,
Title T of the Administrative Code of the City
of New York for the Year 1978.

Petitioner, Gail Markowitz, 410 N.W. 65th Terrace, Margate, Florida 33063,
filed a petition for redetermination of a deficiency or for refund **of** New York
State personal income tax under Article 22 of the Tax Law and New York City
personal income tax under Chapter 46, Title T of the Administrative Code of the
City of New York for the year 1978 (File **No.** 43833).

On October 29, 1986, petitioner waived her right to a formal hearing and
requested that the State Tax Commission render a decision based on the entire
record contained in her file. After due consideration, the State Tax Commission
hereby renders the following decision.

ISSUE

Whether petitioner is entitled to claim a credit of \$3,627.43 for New York
State income tax withheld from her compensation.

FINDINGS OF FACT

1. Petitioner, Gail Markowitz, timely filed a New York State and New York
City income tax resident return for 1978 wherein she computed a total tax due
of \$7,004.85. On her return petitioner claimed a credit of \$3,627.00 for

"State Estimated Tax Paid", thereby leaving a balance due of \$3,377.85 (\$7,004.85 - \$3,627.00). Petitioner did not remit payment of the balance due as shown on her 1978 return.

2. The Audit Division had **no** record of petitioner having filed and paid \$3,627.00 into a 1978 estimated tax account and, on August 1, 1979, a computer billing was issued against petitioner for tax due of \$7,004.85, plus penalty and interest.

3. Petitioner claimed a refund of \$941.00 on her 1981 New York State and New York City income tax return, however, said refund was applied by the Audit Division to **Ms.** Markowitz's 1978 liability. Petitioner filed a claim for the years 1978 and 1981 seeking refunds of \$5,935.00 and \$941.00, respectively. On February 28, 1983, the Audit Division denied petitioner's claim for refund for the years 1978 and 1981 and **Ms.** Markowitz immediately thereafter timely filed a petition for refund with the State Tax Commission.

4. The Internal Revenue Service audited petitioner's 1978 **U.S.** Individual Income Tax Return and, as the result of said examination, Federal taxable income was reduced to a negative amount. The Audit Division concedes that petitioner's New York State and City taxable income for 1978 **is** also a negative amount and that no income tax **is** due for said year. The Audit Division further concedes that since no tax is due for 1978, petitioner **is** entitled to a refund of \$941.00 for the 1981 refund which was applied to her 1978 liability. The only issue left in dispute **is** whether petitioner had \$3,627.43 of New York

1 Petitioner erroneously entered the \$3,627.00 figure on the line for estimated tax payments. It is undisputed that petitioner had \$3,627.43 of New York

State tax withheld from her 1978 compensation and is thus entitled to a refund of said amount.

5. During 1978, petitioner was employed in New York as a sales representative for the Minieri Realty Corporation ("Minieri"), 1125 U.S. Highway 19S, New Port Richey, Florida. Petitioner received commission income of \$72,887.58 from Minieri and said amount was reported on a Federal Form 1099-MISC. Said form also contained the following information:

"Fed Inc Tax W/H:	6,743.65
State Inc Tax W/H:	3,627.43"

6. The Audit Division asserts that petitioner is not entitled to claim credit for \$3,627.43 of New York State tax withheld since it could not verify that Minieri paid over withholding taxes of \$3,627.43 to New York on petitioner's behalf and also since the Federal Form 1099 does not indicate to what state the tax withheld of \$3,627.43 was paid.

7. The sum of \$3,627.43 of New York State income tax was withheld by Minieri from petitioner's 1978 compensation and said amount was paid over to the Audit Division by Minieri.

CONCLUSIONS OF LAW


A. That petitioner has sustained her burden of proof to show that \$3,627.43 of New York State income tax was withheld from her compensation and remitted to the Audit Division. Since there is no New York State or City tax due for 1978, petitioner is entitled to a refund of the \$3,627.43 tax withheld.

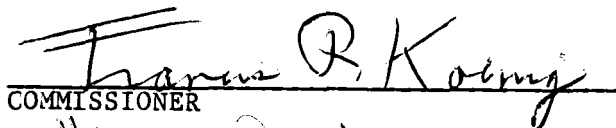
B. That the petition of Gail Markowitz is granted; and that the Audit Division is directed to refund to petitioner the sum of \$3,627.43, plus interest.

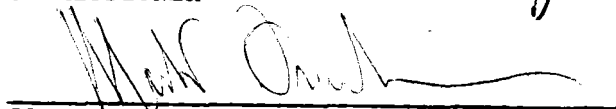
DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987


PRESIDENT


COMMISSIONER


COMMISSIONER