

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

:

PATRICK O. FINNEGAN

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 1980.

Petitioner, Patrick O. Finnegan, 110 West 96th Street, Apt. #9D, New York,
New York 10025, 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 Adminis-
trative Code of the City of New York for the year 1980 (File No. 47893).

A hearing was held before Allen Caplowaith, Hearing Officer, at the
offices of the State Tax Commission, **Two** World Trade Center, New York, New
York, on June 18, 1985 at 9:15 A.M. with all briefs to be submitted by July 18,
1985. Petitioner appeared **pro se**. The Audit Division appeared by John P.
Dugan, Esq. (Herbert Kamrass, **Esq.**, of counsel).

ISSUES

I. Whether petitioner is properly entitled to a disability income exclusion
of \$5,200.00.

11. Whether the adjustment made to petitioner's claimed itemized deductions
was proper.

FINDINGS OF FACT

1. Patrick O. Finnegan (hereinafter "petitioner") filed a New York State Income Tax Resident Return (with City of New York Personal Income Tax) for the year 1980 whereon he reported New York adjusted gross income of \$20,480.00 and New York itemized deductions of \$10,793.00, computed as follows:

Medical and dental expenses	\$ 3,755.00
Taxes	1,840.00
Contributions	153.00
Miscellaneous deductions	988.00
Total federal itemized deductions	\$ 6,736.00
Less: State & local income taxes	1,143.00
Balance	5,593.00
Plus: Disability income exclusion	5,200.00
New York itemized deduction claimed	<u>\$10,793.00</u>

2. On March 25, 1983, the Audit Division issued a Statement of Audit Changes to petitioner wherein his claimed disability income exclusion was disallowed. Additionally, his reported New York adjusted gross income of \$20,480.00 was increased to \$20,561.00 and his reported New York itemized deduction (exclusive of the modification claimed for the disability income exclusion) of \$5,593.00 was reduced to \$5,013.00. Part of the adjustment to petitioner's claimed itemized deductions resulted from his subtraction from total Federal itemized deductions of less than the full amount of state and local income taxes claimed as an itemized deduction for Federal purposes. All of the aforesaid adjustments were made to conform to amounts reported on petitioner's 1980 Federal return based on a Federal/State computer tape match. Accordingly, a Notice of Deficiency was issued against petitioner on June 29, 1983 asserting additional New York State and City personal income tax of \$596.19, plus interest of \$159.68, for a total due of \$755.87.

3. Petitioner argued that the Federal/State computer tape match is incorrect. He contended that he is still in the process of trying to have his 1980 Federal return adjusted but his efforts to date have been unsuccessful due to the loss or misplacement of his 1980 file by the Internal Revenue Service.

4. The Audit Division argued that aside from the Federal conformity basis for disallowance of petitioner's claimed disability income exclusion, said exclusion is not allowable pursuant to section 105(d) of the Internal Revenue Code.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with modifications (none of which are applicable herein) specified in this section."

For New York City purposes section T46-112.0(a) of the Administrative Code of the City of New York provides a substantially similar definition for city adjusted gross income.

B. That section 615(a) of the Tax Law provides in pertinent part that:

"The New York itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year with modifications specified in this section."

For New York City purposes section T46-115.0(a) of the Administrative Code of the City of New York provides a substantially similar definition for city itemized deduction.

C. That section 615(c)(1) of the Tax Law and section T46-115.0(c)(1) of the Administrative Code of the City of New York provide that a modification be made for New York State and City purposes reducing Federal itemized deductions

D. That even if the disability income exclusion of \$5,200.00 had been claimed on petitioner's 1980 Federal return he still would not properly be entitled to claim such exclusion pursuant to Internal Revenue Code section 105(d), which requires a dollar for dollar reduction of such exclusion by the amount of Federal adjusted gross income in excess of \$15,000.00. In the instant case such excess **is** \$5,561.00 (\$20,561.00 less \$15,000.00) which would reduce such claimed exclusion of \$5,200.00 to zero.

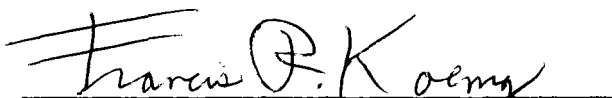
E. That petitioner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code **of** the City of New York, to show that the deficiency asserted was erroneous or improper.


F. That the petition of Patrick O. Finnegan is denied and the Notice of Deficiency issued June 29, 1983 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York
JAN 03 1986

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER