

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

NICOLAE DINI AND ANKA DINI

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.

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Petitioners, Nicolae Dini and Anka Dini, 1 Bogardus Place, Apt. #75, New  
York, New York 10040, 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 1980 (File No. 47967).

A hearing was held before James Hoefer, Hearing Officer, at the offices of  
the State Tax Commission, Two World Trade Center, New York, New York, on  
November 19, 1985 at 3:00 P.M. Petitioners appeared pro se. The Audit Division  
appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

#### ISSUES

- I. Whether petitioners are liable for the payment of interest.
11. Whether petitioners' liability for the year 1980 may be recomputed on  
the basis of separate returns instead of on a joint return basis.

#### FINDINGS OF FACT

1. Petitioners, on April 11, 1981, timely filed a joint New York State  
and City income tax resident return for the year 1980. On said return, peti-  
tioners reported a total New York income of \$17,050.00.

2. On May 31, 1983, the Audit Division issued a Statement of Audit

Changes to petitioners which contained the following explanation:

**"As a New York State resident you are taxable on income received from all sources, whether it is earned from within or without New York State.**

Based on this (sic) New York State Tax Law, and a verification from the Federal Government on your total earnings for 1980, we have recomputed your 1980 New York State income tax liability."

The Audit Division recomputed petitioners' 1980 liability by increasing reported total New York income to \$46,273.00, the amount of petitioners' reported Federal adjusted gross income.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on September 1, 1983, issued a Notice of Deficiency ("Notice") to petitioners for the year 1980. Said Notice asserted additional New York State and City personal income tax due of \$4,253.65, plus interest of \$1,148.87, for a total due of \$5,402.52. The Notice also allowed petitioners credit for a payment of \$4,253.65, leaving only the interest of \$1,148.87 as a balance due.

4. Petitioners do not dispute that the Audit Division correctly computed total New York income to be \$46,273.00; however, they maintain that this figure was adequately disclosed on their return and that it should not have taken the Audit Division approximately two and one-half years after their return was filed to issue the Notice of Deficiency. Petitioners believe that they should not be liable for the payment of interest due to the Audit Division's delay in the issuance of the Notice of Deficiency.

5. Petitioners also argue that their 1980 liability should be recomputed on a separate return basis instead of on the basis of a joint return. Petitioners total New York income and taxable income, recomputed on the basis of separate returns, is shown in the following table:

	<u>Husband</u>	<u>Wife</u>
Total New York income	\$28,840.31	\$17,433.10
Less: New York deduction	(2,918.00)	-0-
New York exemption	(750.00)	(750.00)
New York taxable income	<u>\$25,172.31</u>	<u>\$16,683.10</u>

CONCLUSIONS OF LAW

A. That there is no provision in the Tax Law or Administrative Code of the City of New York which permits interest charges to be waived, abated or cancelled. Accordingly, petitioners are liable for the payment of interest.

B. That petitioners are entitled to change their election from a joint return to that of separate returns (Matter of Lamonte Kennedy and Valerie Kennedy, State Tax Comm., January 9, 1981 and Matter of Peter W. Liu and Lydia W. Liu, State Tax Comm., November 27, 1981). Accordingly, the Audit Division is directed to recompute petitioners' 1980 New York State and City personal income tax liabilities using the taxable incomes set forth in Finding of Fact "5", supra.

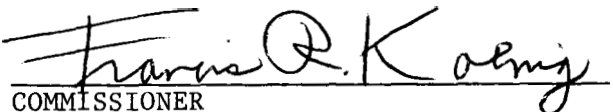
C. That the petition of Nicolae Dini and Anka Dini is granted to the extent indicated in Conclusions of Law "B", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 27 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER