

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES F. & MARY ANN C. GIDDINGS

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1980.

Petitioners, Charles F. and Mary Ann C. Giddings, 52 North Pearl Street, Buffalo, New York 14202 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 1980 (File No. 52494).

A formal hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on September 13, 1985 at 9:00 A.M. Petitioner Charles F. Giddings appeared pro se and for his wife, petitioner Mary Ann C. Giddings. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether any portion of the interest due on petitioners' deficiency determined for the year 1980 may be waived or abated.

FINDINGS OF FACT

1. Petitioners' federal income tax return for the year 1980 was audited by the Internal Revenue Service (IRS) which determined that a deficiency existed with respect to such year.

2. The IRS redetermined petitioners 1980 taxes upon a document entitled "Proposed Changes to 1980 Income Tax" which document was prepared August 30, 1982 and upon which tax due and interest thereon was determined.

document was not mailed by the IRS to petitioners until July 1, 1983. Petitioners signed a consent to such taxes and on or about July 5, 1983 paid to the IRS the tax and interest as shown due on that document.

3. The IRS later billed petitioners for additional interest due with respect to the ten month period (August 1982 to July 1983) from the date of the proposed changes (August 30, 1982) to the date of payment (July 1983). Upon the petitioners' argument that they should not be held responsible for the IRS's delay in billing and that they had promptly consented to and paid the asserted deficiency as computed on the "Proposed Changes to 1980 Income Tax", the IRS cancelled the billing for additional interest from petitioners with respect to the year 1980.

4. On March 1, 1984 the Audit Division issued to petitioner a "Statement of Audit Changes" asserting additional income tax of \$727.69 and interest of \$251.04 accrued to the date of such notice in respect of the year 1980 based upon the previously noted (Findings of Fact "1" and "2") adjustments made by the IRS.

5. On or about March 27, 1984 petitioners mailed payment of \$727.69 to the State Tax Commission. Although petitioners check in payment of their tax due was negotiated on or about April 3, 1984 and "paid" on or about April 4, 1984, payment was credited petitioners by the Audit Division as of March 30, 1984.

6. Interest accrued on the underpayment of \$727.69 from April 15, 1981 until March 30, 1984, the date of payment, was \$258.84.

7. On April 5, 1984 the Audit Division issued to petitioners a Notice of Deficiency for the year 1980 asserting additional personal income tax of \$727.69 and interest of \$260.47 accrued to the date of the notice.

8. Petitioners timely protested the Notice of Deficiency dated April 5, 1984.

9. No penalty is asserted with respect to the deficiency.

10. Petitioners do not contest the correctness of the tax deficiency, they question only the computation of the interest and contest whether they should be responsible for interest (a) from April 15, 1981 to present as asserted by the Audit Division, or (b) for only some portion of such period as was allowed by the IRS.

CONCLUSIONS OF LAW

A. That section 684 of the Tax Law provides for the imposition of interest on underpayments of tax.

B. That there are no provisions in Article 22 of the Tax Law which permit the waiver of interest based upon a delay of the Audit Division in asserting taxes due and, likewise, there exist no provisions providing for waiver of interest based upon delay of the Internal Revenue Service in asserting tax due.

C. Pursuant to Chapter 15 of the Laws of 1983 (effective September 1, 1983), interest **is** imposed upon interest.

D. That petitioners paid the tax on March 30, 1984; interest is owing on said amount of tax from April 15, 1981 through March 30, 1984 and interest is owing on said interest from March 30, 1984.


E. That the petition is granted to the extent noted in Conclusion of Law "D" and is in all other respects denied.

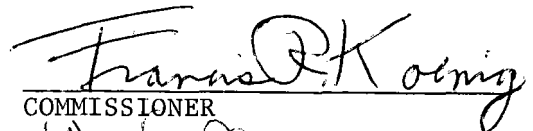
F. That Audit Division is directed to recompute the deficiency to reflect petitioners' payment of the tax due (Conclusion of Law "D") and is otherwise sustained together with such additional interest as by law allowed.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER