

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

BERNARD WERNER AND PHYLLIS WERNER ; 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 Bernard Werner and Phyllis Werner, 15 Van Meter Fenway, New Rochelle, New York 10804, 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. **53139**).

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 September **12**, 1986 at 10:30 A.M. Petitioner Bernard Werner appeared pro se. The Audit Division appeared by John P. Dugan, **Esq.** (Angelo Scopellito, **Esq.**, of counsel).

ISSUE

Whether petitioners properly computed the New York City nonresident earnings tax modification pursuant to section 615(c)(1) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Bernard Werner and Phyllis Werner, timely filed a New York State Income Tax Resident Return for the year 1980 under filing status "Married filing separately on one return". On such return petitioners reduced their total Federal itemized deductions (which was claimed solely by Mr. Werner) by state and local income taxes of \$18,126.49. On their Federal return they

2. On October 21, 1983, the Audit Division issued a Statement of Audit Changes to petitioner Bernard Werner wherein an adjustment of \$778.00¹ was made which was explained as follows:

"All State and local income taxes included in your Federal itemized deductions must be subtracted from total Federal itemized deductions, in order to compute the correct amount of New York itemized deductions.

Since you subtracted only a portion of the State and local income taxes included in Federal itemized deductions, an adjustment is being made for the difference."

3. Based on the above statement, a Notice of Deficiency was issued against petitioners on April 5, 1984 asserting additional personal income tax of \$85.69, plus interest of \$30.66 for a total due of \$116.35.

4. On April 27, 1984, the Audit Division sent petitioner Bernard Werner a notice advising him that the deficiency had been reduced from \$85.69 to \$48.20 based on the following explanation and recomputation:

"All state and local income taxes claimed as a deduction on Federal Schedule A should be entered at Page 2 Schedule C, line 65 of your New York State income tax return.

Modification allowed under Section 615(c)(1) of the New York Tax Law should be entered at line 67, Schedule C.

The correct modification is the difference between the temporary and permanent tax rates for New York City nonresidence [sic]. The correct modification is $.00275 \times \$123,612.00 = \340.00 .

Recomputation of your tax liability is shown below.

New York taxable income per Statement	
of Audit Changes	\$110,079.00
Modification allowed under Section 615(c)(1)	340.00
New York Taxable Income Corrected	<u>\$109,739.00</u>
Tax per tax rate schedule	\$13,923.46

1 The actual difference between state and local income taxes claimed on

Maximum tax benefit	<u>2,662.17</u>
Balance	\$11,261.29
Tax as previously stated	<u>\$11,213.09</u>
Personal Income Tax Due	\$ 48.20"

5. The adjustment at issue was made solely with respect to **Mr.** Werner's liability.

6. The amount \$123,612.00 used in the above computation was net earnings from self-employment (actually \$123,611.52) as reported **on** Mr. Werner's 1980 New York City nonresidentearnings tax return.

7. According to the petition, Mr. Werner's position is that:

"For 1980, the New York City tax payments included in petitioner's federal itemized deductions was \$1,835.95, which was based on a rate of 0.65%. **If** it had been computed at a rate of 0.375%, the deduction would have been \$1,059.20. The excess over \$1,059.20 (or, \$776.75) was properly deducted on the return in computing the New **York** itemized deduction."

8. Petitioners failed to show that \$1,835.95 **was** the amount of New York City nonresident earnings tax paid in 1980 and included in the total amount claimed on their Federal return for State and local income taxes of \$18,903.24.

CONCLUSIONS OF LAW

A. That section 615 of the Tax Law in effect during the year in issue provides that:

"(c) Modificationsreducing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) income taxes imposed by this state or any other taxing jurisdiction, except city earnings taxes on nonresidents that are imposed upon and paid by taxpayers for taxable years beginning after December thirty-first, nineteen hundred seventy and before January first, nineteen hundred eighty-three...to the extent that the amount of such tax exceeds the tax computed as if the rates were one-fourth of one percent of wages subject to tax **and** three-eighths of one percent of net earnings from self-employment subject to tax;".

B. That petitioner Bernard Werner has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law, to **show** that the modification under section 615(c)(1) of the Tax Law should properly be \$776.75.

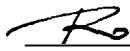
C. That since the adjustment at issue solely affected Mr. Werner's tax liability, the Notice of Deficiency is cancelled with respect to Mrs. Werner.

D. That the petition **of** Bernard Werner and Phyllis Werner is granted to the extent indicated **in** Finding of Fact "4" and Conclusion **of** Law "C"; that the Audit Division is directed to modify the Notice of Deficiency accordingly; and that, except as so granted, the petition is in all other respect denied.

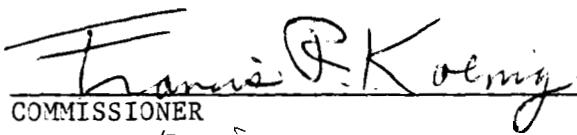
DATED: Albany, New York

STATE TAX COMMISSION

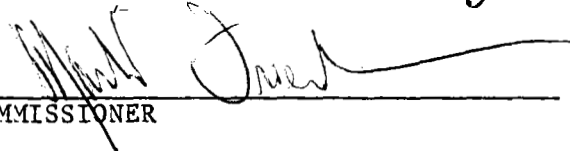
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PRESIDENT



COMMISSIONER



COMMISSIONER