

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter **of** the Petition

of

WILLIAM P. HERZSTOCK AND MAE **H.** HERZSTOCK

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, William P. Herzstock and Mae **H.** Herzstock, **Box** 387, Wolfeboro Falls, New Hampshire 03896, 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. 53919).

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** October 23, 1986 at 9:15 **A.M.** Petitioner William P. Herzstock appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (**Angelo**A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner William P. Herzstock is properly entitled to claim an adjustment **to** income for New York State purposes where **no** such adjustment to income was claimed for Federal purposes.

FINDINGS OF FACT

1. William P. Herzstock (hereinafter "petitioner") and his wife, Mae **H.** Herzstock, filed a joint New York State Income Tax Resident Return for the year 1980 whereon petitioner claimed an adjustment **to** income for moving expenses **of** \$7,538.00. **An** adjustment to income for moving expenses was not claimed on petitioner's 1980 Federal return.

2. On August 29, 1983, the Audit Division issued a Statement of Audit Changes wherein petitioner's claimed adjustment to income of \$7,538.00 was disallowed. The effect of such disallowance was to increase his reported New York adjusted gross income of \$48,839.00 to \$56,377.00, the adjusted gross income reported on his Federal return. Accordingly, a Notice of Deficiency was issued against petitioner and his wife on April 12, 1984 asserting additional personal income tax of \$829.18, plus interest of \$296.74, for a total due of \$1,125.92.

3. Petitioner submitted a statement from his employer, Eastman Kodak Company, wherein it was stated that in 1980 he received a total relocation reimbursement of \$7,537.96.

4. Petitioner failed to claim the moving expense adjustment on his 1980 Federal return due to his misinterpretation of the tax law. He believes that since he was properly entitled to claim said adjustment on his Federal return, his failure to do so should not affect the treatment of such adjustment for New York State purposes.

CONCLUSIONS OF LAW

A. That section 612 of the Tax Law provides:

"(a) General. 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 the modifications specified in this section."

B. That section 612 of the Tax Law provides no modifications which may serve to reduce petitioner's Federal adjusted gross income (on his New York State return) by amounts of deductions or adjustments to income which petitioner inadvertently failed to claim on his Federal return.

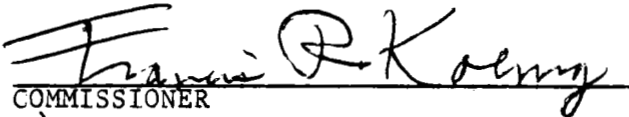
C. That the petition of William P. Herzstock and Mae H. Herzstock is denied and the Notice of Deficiency issued April 12, 1984 is sustained, together with such additional interest as may be lawfully owing.

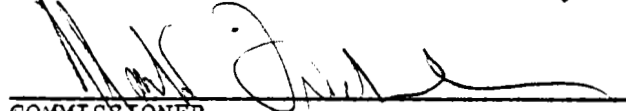
DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER