

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions

of

:

JAMES M. JONES

DECISION

for Redetermination of Deficiencies or for
Refunds of Personal Income Tax under Article 22 :
of the Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York for :
the Years 1980 and 1981.

Petitioner, James M. Jones, 1204 Noble Avenue, Bronx, New York 10472,
filed petitions for redetermination of deficiencies or for refunds of personal
income tax under Article 22 of the Tax Law and Chapter 46, Title T of the
Administrative Code of the City of New York for the years 1980 and 1981 (File
Nos. 54637 and 60667).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices
of the State Tax Commission, Two World Trade Center, New **York**, New York, on
January 13, 1986 at 1:15 P.M. Petitioner appeared pro se. The Audit Division
appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether Federal income taxes paid by petitioner on his 1980 and 1981
U.S. individual income tax returns was a proper itemized deduction for New York
State and New York City income tax purposes.

11. Whether the Audit Division's disallowance **of** petitioner's claimed
deduction for Federal income taxes constituted a form of double taxation and
violated his constitutional rights.

FINDINGS OF FACT

1. Petitioner, James M. Jones, filed New York State and New York City income tax resident returns for the years 1980 and 1981. Petitioner included Federal income taxes paid of \$4,764.29 and \$6,339.84, respectively, for the years 1980 and 1981 in total New York State and New York City itemized deductions

2. On May 18, 1984, the Audit Division issued a Notice of Deficiency to petitioner for 1980 asserting additional personal income tax due of \$776.97 (New York State - \$601.65; New York City - \$175.32). On April 5, 1985, a Notice of Deficiency was issued to petitioner for 1981. Said notice asserted additional tax due of \$861.09 (New York State - \$592.85; New York City - \$268.24). Both of the aforementioned notices were premised on the Audit Division's disallowance of petitioner's claimed deduction of Federal income taxes in the amounts of \$4,764.29 for 1980 and \$6,339.84 for 1981.

3. Petitioner took the position that there is no law or statute which expressly prohibits a taxpayer from claiming Federal income taxes as a deduction on his New York State and New York City income tax return.

4. Petitioner also argued that for New York State and New York City to impose a tax on the tax he paid to the United States government constituted a **form** of double taxation, thereby violating his constitutional rights.

CONCLUSIONS OF LAW

A. That the New York State and New York City itemized deductions of a resident individual are the same as his Federal itemized deductions, subject to certain modifications [Tax Law section 615(a) and section T46-115.0(a) of Chapter 46, Title T of the Administrative Code of the City of New York, respectively].

B. That there are no provisions in the New York State or New York City Tax Law which permit a taxpayer to increase his Federal itemized deductions by the amount of Federal income tax paid during the year [section 615(d) of the Tax Law for State purposes and section T46-115.0(d) of Title T for City purposes]

C. That section 164 of the Internal Revenue Code of 1954 provides for those taxes which are includible in Federal itemized deductions. Section 164(a)(3) of the Internal Revenue Code permits ~~state and local~~ income taxes to be included in Federal itemized deductions. Furthermore, section 275 of the Internal Revenue Code and Treasury Regulation section 1.164-2(a) specifically deny a deduction for certain taxes including a deduction for Federal income taxes withheld at source on wages. Since there is no provision in the Internal Revenue Code or New York State or New York City Tax Law which allows petitioner to deduct his Federal income taxes paid for 1980 and 1981, said claimed deduction has been properly disallowed by the Audit Division.


D. That the constitutionality of the laws of the United States of America, New York State and New York City is presumed by the State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional.

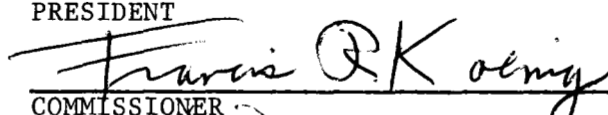
E. That the petitions of James M. Jones are denied and the notices of deficiency issued May 18, 1984 and April 5, 1985 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1986



PRESIDENT


COMMISSIONER


COMMISSIONER