

STATE OF **NEW** YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE VALENTE AND CHARLOTTE VALENTE

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1980 and 1981.

Petitioners, George Valente and Charlotte Valente, 136 Park Avenue,
Harrison, New York 10528, filed a petition for redetermination of a deficiency
or for refund of personal income tax under Article 22 of the Tax Law for the
years 1980 and 1981 (File No. 55169).

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 9:30 A.M. Petitioners appeared **by** Irwin Leisner. The
Audit Division appeared by John P. Dugan, **Esq.** (Angelo Scopellito, Esq., **of**
counsel).

ISSUE

Whether, as the result of a field audit, adjustments attributing additional
personal income to petitioner George Valente, for the years 1980 and 1981, were
proper.

FINDINGS OF FACT

1. Petitioners, George Valente and Charlotte Valente, timely filed joint
New York State resident income tax returns for the years 1980 and 1981 whereon
the only earned income reported for each year was the wages earned by Mr.
Valente as follows:

<u>Employer</u>	<u>1980</u>	<u>1981</u>
Bartval Inc., 1481 Second Avenue New York, New York 10021	\$14,500.00	\$16,800.00
Eastpark Flower Shop Inc., 34 East Parkway Scarsdale, New York 10583	<u>13,230.00</u>	<u>14,512.50</u>
<u>TOTAL</u>	<u>\$27,730.00</u>	<u>\$31,312.50</u>

2. On April 10, 1984, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioners wherein, as the result of a cash availability audit, adjustments were made attributing additional personal income of \$15,876.00 (1980) and \$11,617.00 (1981) to petitioner George Valente. Said amounts were deemed constructive dividends from Bartval Inc. since Mr. Valente had a proprietary interest in said business. Accordingly, a Notice of Deficiency was issued against petitioners on May 30, 1984 asserting additional personal income tax of \$3,685.00, plus penalty of \$185.00 and interest of \$1,198.43 for a total due of \$5,068.43. Said penalty was asserted for negligence pursuant to section 685(b) of the Tax Law.

3. On December 15, 1983, petitioners executed a consent form extending the period of limitation on assessment for 1980 to any time on or before April 15, 1985. Accordingly, the aforesaid Notice of Deficiency was timely issued for said year.

4. Petitioners had three children during the years at issue. One child, Amanda Kate Valente, was born October 12, 1980. During 1980, petitioners' other children were age two and eleven.

5. The estimated living expenses included in the cash availability analysis were determined by assigning certain amounts to items listed categorically on the cash living expense schedule as follows:

<u>Item</u>	<u>1980</u>	<u>1981</u>
Food	\$6,668 .00	\$6,926 .00
Transportation	2,228.00	2,492.00
Clothing	1,550.00	1,675.00
Personal Care	475.00	538.00
Other Family Consumption	1,187 .00	1,240.00
Other Items	1,151.00	1,234.00

According to said schedule, the amounts assigned were taken from an undetermined "chart". A notation appears on the schedule to the effect that **all** amounts assigned, with the exception of transportation, include a 20% increase for the "5th Family Member". It is assumed that the "5th Family Member" referred to **is** the child born October 12, 1980.

6. Petitioners alleged that the requirements were overstated on the cash availability analysis by \$9,000.00. Said amount they contended is comprised **of** cash gifts made to their children by family members for occasions such as christenings, baptismals, birthdays and Christmas. Such gifts, they claim, were deposited into their checking account.

7. **To** support their contention that such gifts were made to their children during the years at issue petitioners submitted **six** affidavits from family members. According to such affidavits, the total gifts made to petitioners' children in 1980 were \$3,450.00 and in 1981 such gifts totalled \$3,985.00. **No** cancelled checks were submitted to show that funds were transferred to the children from relatives or that if such funds were transferred, that the gifts were in fact deposited into petitioners' checking account.

8. On November 9, 1981, petitioners opened three Dreyfus Liquid Asset Accounts in their children's individual names, each in the amount of \$3,000.00. Although petitioners contended that the source of funds deposited into said accounts were the gifts made to their children, no evidence was submitted to

9. Petitioners submitted a statement from Mrs. Valente's parents wherein they claimed that they gave petitioners cash gifts during the years at issue. In such statement the amount of such gifts **is** estimated. **No** supporting documentation was submitted to substantiate such alleged gifts.

10. It was alleged by petitioners' representative that Mr. Valente borrowed \$11,000 .00 from his brother, John Valente, during 1980 for which no credit was given as a source of funds. He submitted an affidavit by John Valente dated May 29, 1985 wherein eight separate 1980 amounts, purporting to be **loans** to petitioner George Valente, totalling \$11,000.00, were listed. He claimed that said loans were deposited by petitioner George Valente into his checking account. However, although the audit workpapers show deposits of the amounts listed **on** said affidavit on the dates specified, at least one such deposit of a specific alleged loan proved to be a transfer **of** funds from petitioners' savings account rather than a loan. It was further contended that the purported loans were repaid in full **to** John Valente **on** July 31, 1980. To evidence this contention petitioners submitted a cancelled check to John Valente dated July 31, 1980 in the amount of \$11,000.00. **No** documentation was submitted to show that a debtor-creditor relationship existed **in** 1980 or that the purported individual loan amounts were transferred from accounts **of** John Valente. In any case, even if the alleged loans were accepted, repayment in full during the same year would lead to offsetting adjustments which would have **no** effect on the deficiency.

CONCLUSIONS OF LAW

A. That since one of petitioners' children was born October 12, 1980, it was erroneous for the Audit Division to increase the living expenses for 1980 by 20 percent relative to the 1979 level.

appropriate. Accordingly, the cash living expenses for 1980 are recomputed as follows:

<u>1980 Cash Living Expenses</u>	
<u>Item</u>	<u>Amount</u>
Food	\$ 5,946.00 ¹
Transportation	2,228.00
Clothing	1,382.00
Personal Care	424.00
Other Family Consumption	1,058 .00
Other Items	1,026 .00
Total Living Expenses	<u>\$12,064.00</u>
Less: Paid by Check	<u>7,671 .00</u>
Balance	4,393.00
Less: Petitioner's Outside Meals	<u>1,100 .00</u>
1980 Cash Living Expenses	<u><u>\$ 3,293.00</u></u>

B. That based on the \$1,295.00 decrease in cash living expenses for 1980 (from \$4,588.00 to \$3,293.00), the adjustment for additional income for 1980 is reduced from \$15,876.00 to \$14,581.00.

C. That petitioners have failed to sustain their burden of proof imposed pursuant to section 689(e) of the Tax Law, to show that the adjustments made by the Audit Division should properly be reduced by amounts purportedly representing gifts to petitioners' children or loans to Mr. Valente.

D. That the petition of George Valente and Charlotte Valente is granted to the extent provided in Conclusion of Law "B", supra, and except as so

¹ Transportation expense was not used in 1980.

granted, the petition is, in all other respects, denied; that the Notice of Deficiency issued May 30, 1984 is to be modified so as to be consistent with the decision rendered herein.

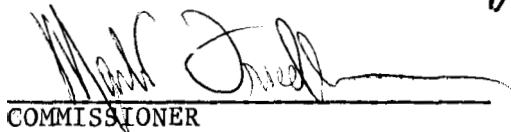
DATED: Albany, New York

STATE TAX COMMISSION

FEB 10 1987

PRESIDENT


COMMISSIONER


COMMISSIONER