

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES AND SALLY (DECEASED) GIDARO

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income and Unincorporated :
Business Taxes under Articles 22 and 23 of the
Tax Law for the Year 1981.

Petitioners, Charles and Sally (deceased) Gidaro, 249 East Avenue, Mount Carmel, Pennsylvania 17851, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1981 (File No. 55436).

Petitioners waived their right to a hearing and requested that a decision be rendered based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioners are entitled to an additional refund of tax.

FINDINGS OF FACT

1. On June 14, 1984, the Audit Division issued against petitioners a Notice and Demand for Payment of Income Tax Due in the amount of \$219.00 plus interest for the year 1981.

2. Petitioners timely filed a joint New York State Nonresident Income Tax Return for 1981 reporting a New York taxable income of \$28,292.80 with a tax due thereon of \$1,243.92. Mr. Gidaro's employer withheld \$1,882.70 in state and local taxes; thus, petitioners applied for a refund of \$638.70.

3. Upon receipt of petitioners' return, the Audit Division recomputed the tax due using a standard deduction of \$2,500.00. This was done because petitioners had claimed a total itemized deduction of \$7,275.00 but had not completed schedule C itemizing their claims. The Audit Division determined that petitioners were entitled to a refund of \$57.66 plus interest. Petitioners were sent a check in the amount of \$59.88 and an explanation of the change.

4. Petitioners returned the refund check with a letter which listed itemized deductions as they appeared on the petitioners' federal return for 1981. On the basis of this information, the Audit Division again recomputed petitioners' tax liability, determining a tax due of \$1,442.02. Since petitioners had paid a tax of \$1,882.70, their refund totalled \$460.68. The Audit Division authorized a refund in that amount but transferred \$364.43 of the total refund amount to a prior assessment, number F8210154171, leaving a net refund to petitioners of \$96.25, plus interest of \$11.62, for a total of \$107.87.

5. The basis of assessment number F8210154171 was an adjustment to petitioners' 1978 New York tax return to conform with federal audit adjustments.

6. In February 1983, petitioners filed an amended tax return for 1981 reporting total New York taxes due of \$1,641.52 and claiming a refund of \$241.18. The Audit Division conceded that the reported tax due accurately represented petitioners' joint tax liability for 1981 but recalculated their refund as follows:

Total tax withheld ¹	\$1,883.00
Amount previously refunded to petitioners (\$364.43 applied to prior assessment + \$96.25 refunded to petitioners)	- 461.00
Tax paid	\$1,422.00
Tax due per amended return	- 1,641.00
Deficiency	\$219.00

7. In August 1984, petitioners filed a second amended return which was identical to the first amended return except that all numbers were rounded off to the nearest whole.

8. Petitioners base their claim for an additional refund on the ground that the Audit Division incorrectly adjusted their 1978 return. They submitted no documents to support their claim.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain their burden of proof, imposed by section 689(e) of the Tax Law, to show that the Audit Division's computations were erroneous.

B. That the petition of Charles and Sally (deceased) Gidaro is in all respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

APR 9 1986

Rodolph W. Allen
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER