

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

STANISLAUS KEDZIERSKI AND ZELINDA KEDZIERSKI : DECISION

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

Petitioners, Stanislaus Kedzierski and Zelinda Kedzierski, 58 Arcadia
Place, Staten Island, New York 10310, filed a petition for redetermination of
deficiencies or for refunds **of** New York State personal income tax under Article
22 **of** the Tax Law and New York City personal income tax under Chapter **46**, Title
T **of** the Administrative Code of the City of New York **for** the years 1980 and
1981 (File Nos. 55656 and 61093).

A hearing was held before James Hoefer, Hearing Officer, at the offices of
the State Tax Commission, Two World Trade Center, New York, New York, **on**
June 20, 1986 at 10:00 A.M. Petitioner Zelinda Kedzierski appeared **pro se**.
The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, **Esq.**, of
counsel).

ISSUE

Whether the full amount of state and local income taxes claimed by petitioners
as itemized deductions **on** their Federal income tax returns must be subtracted
out in determining New York itemized deductions.

FINDINGS OF FACT

1. Petitioners, Stanislaus Kedzierski and Zelinda Kedzierski, timely filed separate New York State and City resident income tax returns for the years 1980 and 1981. For 1980, petitioners computed a New York itemized deduction of \$7,145.69 by subtracting \$3,835.32 of state and local income taxes from total Federal itemized deductions of \$10,981.01. For 1981, a New York itemized deduction of \$5,814.30 was computed by subtracting \$4,146.39 of state and local income taxes from total Federal itemized deductions of \$9,960.69. On their 1980 and 1981 Federal income tax returns petitioners claimed as itemized deductions for state and local income taxes the sums of \$4,220.70 and \$4,810.01, respectively.

2. On December 15, 1983, the Audit Division issued a Statement of Audit Changes to petitioners for 1980 wherein New York itemized deductions claimed by Mr. Kedzierski were reduced by \$385.00. A second Statement of Audit Changes was issued to petitioners for the year 1981 on August 27, 1984, wherein New York itemized deductions claimed by Mrs. Kedzierski were reduced by \$664.00. Both of the aforementioned reductions were based on the Audit Division's position that the total amount claimed by petitioners as itemized deductions for state and local income taxes on their Federal returns must be subtracted out, pursuant to Tax Law §615(c)(1), in computing New York itemized deductions.

3. Based on the above mentioned statements of audit changes, the Audit Division issued three notices of deficiency to petitioners for the years 1980 and 1981. The first notice was dated April 5, 1984 and asserted that Mr. Kedzierski owed \$92.40 of New York State and City personal income tax for the year 1980 plus interest. The second notice, also dated April 5, 1984, asserted that

Mrs. Kedzierski owed \$64.01¹ of New York State personal income tax for the year 1980, plus interest. The third notice, dated February 26, 1985, asserted that Mrs. Kedzierski owed \$108.31 of New York State and City personal income tax for the year 1981, plus interest.

4. The following table details the manner in which petitioners computed the itemized deduction for state and local income taxes as claimed on their Federal income tax returns:

	<u>1980</u>	<u>1981</u>
State & local income taxes paid through payroll deductions	\$3,835.32	\$4,146.39
State & local income taxes paid in 1980 for balance due on 1979 return	385.38	
State & local income taxes paid in 1981 for balance due on 1980 return		663.62
TOTAL	<u>\$4,220.70</u>	<u>\$4,810.01</u>

5. It is petitioners' position that: the amounts paid to New York for the balances due on their 1979 and 1980 returns, and claimed as itemized deductions on their 1980 and 1981 Federal returns, should not have to be subtracted out in determining New York itemized deductions. Petitioners maintain that if they are required to subtract these amounts, it results in double taxation.

CONCLUSIONS OF LAW

A. That Tax Law §615(a) provides that the New York itemized deduction *of* a resident individual means the total amount of a taxpayer's Federal deductions, with specific modifications provided for in subsections (b) and (c) of section 615. Tax Law §615(c) provides, in pertinent part, as follows:

"The total amount of deductions from federal adjusted gross income shall be reduced by the amount *of* such federal deductions for:

¹ In computing Mrs. Kedzierski's liability for 1980, the Audit Division

(1) income taxes imposed by this state or any other taxing jurisdiction".

B. That 20 NYCRR 117.11 provides, in pertinent part, that:

"The total amount of itemized deductions from Federal adjusted gross income must be reduced by the amount of Federal deductions for:

(a) Income taxes imposed by New York State or any other state, or by any other taxing authority. This modification eliminates from Federal itemized deductions the amount of any income taxes included therein, regardless of the identity of the taxing jurisdiction, as the New York State Personal Income Tax Law does not allow the deduction of income taxes."

C. That the Audit Division properly computed petitioners' New York itemized deductions for the years 1980 and 1981 inasmuch as the total amount of state and local income taxes included in Federal itemized deductions must, with a minor exception not applicable herein, be subtracted out in determining New York itemized deductions.

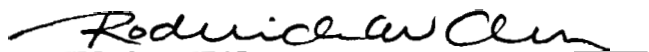
D. That pursuant to footnote 1, supra, the Audit Division must recompute Mrs. Kedzierski's 1980 liability allowing her the maximum tax benefit pursuant to Tax Law 5603-A.


E. That the petition of Stanislaus Kedzierski and Zelinda Kedzierski is granted to the extent indicated in Conclusion of Law "D", supra; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1986


PRESIDENT


COMMISSIONER


COMMISSIONER