

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD C. CHASE AND MARION M. CHASE

DECISION

for Redetermination of a Deficiency or for
Refund 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 Year 1981.

Petitioners, Gerald C. Chase and Marion M. Chase, 1111 Park Avenue, #7H,
New York, New York 10128, filed a petition for redetermination of a deficiency
or for refund 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 year 1981 (File No. 61383).

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 May 5, 1987 at 9:15 A.M. Petitioner Gerald C. Chase appeared pro se.
The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, **Esq.**, of
counsel).

ISSUES

I. Whether the Notice of Deficiency and the Notice of Claim were timely
issued.

11. Whether interest is due and owing on the deficiencies asserted.

FINDINGS OF FACT

1. Petitioners, Gerald C. Chase and Marion M. Chase, filed a joint New
York State and City of New York Resident Income Tax Return for the year 1981,

whereon they failed to compute and pay the New York State and City minimum income taxes on their New York items of tax preference. Said return was dated April 11, 1982.

2. On November 8, 1984, the Audit Division issued a Statement of Audit Changes to petitioners wherein their capital gains deduction was held subject to New York State and City minimum income taxes. The explanation and computations included thereon are as follows:

"The portion of Long Term Capital Gain not subject to New York Personal Income Tax is an Item of Tax Preference and subject to New York Minimum Income Tax. Computation of New York Items of Tax Preference **is** as follows:

Capital Gains Deduction	\$30,120.00	
20% Modification	<u>6,024.00</u>	
New York Items of Tax Preference	\$24,096.00	
<u>New York Minimum Income Tax</u>		
New York Items of Tax Preference	\$24,096.00	
Less: Specific Deduction	<u>5,000.00</u>	
Balance	\$19,096.00	
Less: New York State Personal Income Tax After Credits	<u>93.28</u>	
Minimum Taxable Income	\$19,002.72	
State Minimum Tax Due @ 6%	\$ 1,140.16	
City Minimum Tax Due @ 2 1/2%	\$ 475.07	
Total Minimum Income Tax Due		\$1,615.23"

3. Based on the above statement, a Notice of Deficiency was issued against petitioners on April 5, 1985, asserting additional New York State and City personal income tax (minimum tax) of \$1,615.23, plus interest of \$579.77, for a total due of \$2,195.00.

4. On May 24, 1985, petitioners filed a petition with respect to the aforesaid deficiency.

5. On May 5, 1986, the Audit Division issued a Notice of Claim to petitioners whereon a greater deficiency of \$500.55 was asserted. The explanation and computation of such greater deficiency were included thereon as follows:

"The Audit Division claims a deficiency greater than that asserted against you in the 1981 Notice of Deficiency dated April 5, 1985. The greater deficiency is asserted under Section 689(d)(1) of Article 22 of the New York State Tax Law.

The greater deficiency results from the following determination:

(1) 10% of excess of net long term capital gains over net short term capital losses must be added to income, and (2) All income taxes, included in Federal Itemized Deductions, must be subtracted to arrive at New York Itemized Deductions.

A computation of the greater deficiency is attached.

This Notice of Claim is subject to interest from the due date of the return to the date of payment.

Income Tax Modification	2,020.
Capital Gains Modification:	5,020.
Taxable Income, Previously Reported	<u>3,332.</u>
Taxable Income, As Corrected	<u>10,372.</u>
Capital Gains Deduction	30,120.
20% Thereof	<u>6,024.</u>
Items of Tax Preference	<u>24,096.</u>
Specific Deduction	(5,000.)
New York State Personal Income Tax	<u>(476.)</u>
Minimum Taxable Income	<u>18,620.</u>

	<u>State</u>	<u>NYC</u>	<u>Total</u>
Tax on Taxable Income	\$ 476.04	\$193.30	
Minimum Income Tax	<u>1,117.20</u> (6%)	<u>465.50</u> (21%)	
Total	<u>1,593.24</u>	<u>658.80</u>	
Less Tax Computed Per Return	<u>93.28</u>	<u>42.98</u>	
Corrected Tax Due	<u>1,499.96</u>	<u>615.82</u>	
Tax Due Per Deficiency Dated 4-5-85	<u>1,140.16</u>	<u>475.07</u>	
Additional Personal Income Tax			
Subject to Notice of Claim	\$ 359.80	\$140.75	\$500.55"

6. Petitioners do not dispute the adjustments or the computations of additional tax due as shown on both the Notice of Deficiency and the Notice of Claim.

7. Petitioners' only arguments are that the deficiencies were issued without the period of limitation on assessment and that it was improper for the

Audit Division to assert interest on a deficiency asserted years after the return was filed. Petitioners also believe that interest should cease to accrue upon the filing of their petition.

CONCLUSIONS OF LAW

A. That Tax Law § 683 provides, in pertinent part, that:

"(a) General. -- Except as otherwise provided in this section, any tax under this article shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed)."

B. That the Notice of Deficiency dated April 5, 1985 was issued within the three year period of limitation on assessment pursuant to section 683(a) of the Tax Law.

C. That Tax Law § 689(d) provides that:

"Assertion of deficiency after filing petition. -- (1) Petition for redetermination of deficiency. -- If a taxpayer files with the tax commission, a petition for redetermination of a deficiency, the tax commission shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section six hundred eighty-five, if claim therefor is asserted at or before the hearing under rules of the tax commission."

D. That since the Notice of Claim was issued on May 5, 1986, which was before the hearing held herein, the State Tax Commission had the power to determine a greater deficiency. Accordingly, such assertion of a greater deficiency is therefore timely within the meaning and intent of Tax Law § 689(d)(1).

E. That Tax Law § 684 provides, in pertinent part, that:

"(a) General. -- If any amount of income tax is not paid on or before the last date prescribed in this article for payment, interest on such amount...shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted."

There is no provision in the Tax Law or Administrative Code which allows the abatement of such interest for any reason. Petitioners could have stopped the accrual of interest on the asserted deficiency, by paying the amount due pending the outcome of this proceeding.


F. That sections T46-183.0(a), T46-189.0(d)(1) and T46-184.0(a) of the Administrative Code of the City of New York are identical in content to Tax Law §§ 683(a), 689(d)(1) and 684(a).

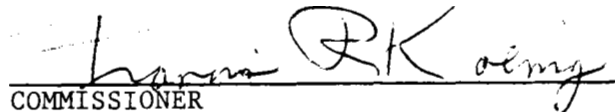
G. That the petition of Gerald C. Chase and Marion M. Chase **is** denied; that the Notice of Deficiency dated April 5, 1985 and the Notice of Claim dated May 5, 1986 are sustained, together with such additional interest as may be lawfully owing.

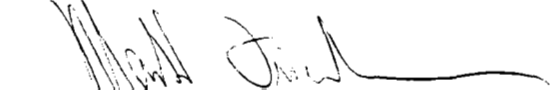
DATED: Albany, New York

STATE TAX COMMISSION

AUG 12 1987


PRESIDENT


COMMISSIONER


COMMISSIONER