

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL G. AUGUST

:

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 Years 1980, 1981 and 1982.

Petitioner, Michael G. August, 726 Buffalo Avenue, Lindenhurst, New York, 11757-2036, 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 years 1980, 1981 and 1982 (File No. 64967).

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 April 29, 1987 at 2:45 P.M. Petitioner appeared by his father, Michael August. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner **is** entitled to claim the New York State and City tax withheld from his wages as both a credit against tax and also as a payment of tax.

FINDINGS OF FACT

1. Petitioner herein, Michael G. August, timely filed New York State and City resident income tax returns for the years 1980, 1981 and 1982. The following table details the manner **in** which petitioner computed the refund due him on each **of** the returns filed for the years at issue:

	1980	1981	1982
New York State tax per table	\$159.00	\$191.00	\$229.00
Less: household credit	35.00	35.00	40.00
Total New York State tax due	124.00	156.00	189.00
New York City tax per table	73.00	86.00	101.00
Total State and City tax	197.00	242.00	290.00
Less: State and City tax withheld	295.80	347.60	402.90
Refund	<u>\$ 98.80</u>	<u>\$105.60</u>	<u>\$112.90</u>

2. Petitioner filed claims for refund for 1980, 1981 and 1982 wherein he asserted that **no** tax was due for said years and that he **was** therefore entitled to a full refund **of** all taxes paid on his returns. The computation of the refunds being sought by petitioner are summarized in the following table:

	1980	1981	1982
Total State and City tax due as shown on original returns	\$197.00	\$242.00	\$290.00
Less: State credit based on Internal Revenue Code § 31	295.80	347.60	402.90
Tax due after credits	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
State and City tax withheld from wages	295.80	347.60	402.90
Less: Amounts previously refunded	98.80	105.60	112.90
Refund	<u>\$197.00</u>	<u>\$242.00</u>	<u>\$290.00</u>

3. It is petitioner's position that the tax withheld from **his** wages can be claimed twice **on** his returns; first as a credit against tax pursuant to Internal Revenue Code § 31 (thus reducing his tax liability for the years at issue to zero) and, second, as a payment of tax. Mr. August asserts that he is entitled to the duplicative credit for New York State and City purposes pursuant to Tax Law § 607 and City Administrative Code § T46-107.0 which both provide

that any term used in the State and City Tax Law "shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning **is** clearly required".

4. On April 23, 1984, the Audit Division issued a notice **of** disallowance to petitioner for 1980, 1981 and 1982 wherein his claims for refund of New York State taxes were disallowed in full. A second notice of disallowance was issued to petitioner on July **30**, 1984, wherein his claims for refund of New **York** City taxes for 1980, 1981 and 1982 were also disallowed in full. Petitioner timely filed a petition with the State Tax Commission for refund.

5. Petitioner has filed similar claims for refund with the Internal Revenue Service for the years 1980, 1981 and 1982. Said claims for refund have been denied by the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That section 673 of the Tax Law and section T46-173.0 of the Administrative Code of the City of New York both provide that a taxpayer is entitled to credit for tax withheld from wages and that the amount of tax actually deducted and withheld during the year "shall be deemed to have been paid to the tax commission on behalf of the person from whom withheld, and such person shall be credited with having **paid** that amount of tax for the taxable year" (emphasis added).

B. That Tax Law § 673 and Administrative Code § T46-173.0 each allow petitioner a credit as a payment for tax withheld from his wages. There are **no** sections in either Article **22 of** the Tax Law or Chapter 46, Title T of the Administrative Code of the City of New York which would provide a basis for the duplicative credit petitioner seeks.

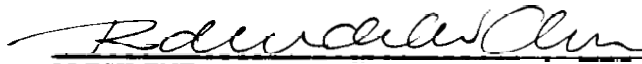
C. That Internal Revenue Code § 31 **is** inapplicable in the instant matter. Assuming, arguendo, that Internal Revenue Code § 31 **is** applicable, it **is** clear that petitioner has misconstrued the intent and application of said section.

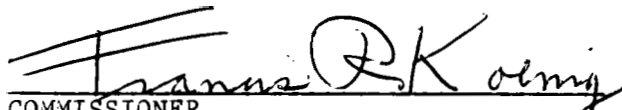
D. That the petition of Michael G. August **is** denied in its entirety and the notices of disallowance dated April 23, 1984 and July 30, 1984 are hereby sustained.

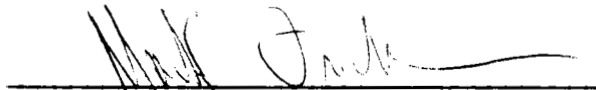
DATED: Albany, New York

STATE **TAX** COMMISSION

AUG 27 1987.


PRESIDENT


COMMISSIONER


COMMISSIONER