

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 31, 1984

Jerry & Helga Cosentino
120-9 Carver Loop
Bronx, NY 10475

Dear Mr. & Mrs. Cosentino:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JERRY COSENTINO and HELGA COSENTINO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Articles 22 and 30	:	
of the Tax Law for the Year 1976.	:	

Petitioners, Jerry Cosentino and Helga Cosentino, 120-9 Carver Loop, Bronx, New York 10475, 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 Article 30 of the Tax Law for the year 1976 (File No. 31993).

A small claims 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 February 6, 1984 at 2:45 P.M. Petitioner Jerry Cosentino appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether, in arriving at their New York adjusted gross income, petitioners may reduce their federal adjusted gross income by the excess social security taxes withheld from the compensation of petitioner Jerry Cosentino.

FINDINGS OF FACT

1. On November 15, 1978, petitioners, Jerry Cosentino and Helga Cosentino, late filed a joint New York State Income Tax Resident Return (with New York City Personal Income Tax) for the year 1976. On said return petitioners reduced their federal adjusted gross income by a subtraction modification of

\$338.00 for "excess social security" taxes withheld from the wages of petitioner Jerry Cosentino. Additionally, on said return petitioners claimed a credit of \$125.00 for "1965 tax".

2. On June 7, 1979¹, the Audit Division issued a Statement of Audit Changes to petitioners wherein the aforestated subtraction modification and credit were disallowed. The disallowance of said credit was not contested by petitioners and accordingly will not be addressed herein.

3. On September 30, 1980, in response to a letter from petitioner Jerry Cosentino, the Audit Division issued a statement to petitioners wherein its disallowance of the subtraction modification was explained as follows:

"There is no provision in the New York State Tax Law which provides for a subtraction from Federal income in arriving at New York income for excess social security. This matter should be taken up directly with the Federal tax authorities."

4. On October 29, 1980, the Audit Division issued a Notice of Deficiency to petitioners asserting additional New York State and New York City personal income taxes of \$78.00², plus penalties and interest of \$42.80, for a total due of \$120.80. Said penalties were asserted pursuant to sections 685(a)(1) and 1312(a) of the Tax Law for failure to timely file the return at issue. Section 1312(a) incorporates section 685(a)(1) for New York City purposes.

5. Petitioner Jerry Cosentino alleged that he is properly entitled to the subtraction modification in 1976 since he did not receive back the excess social security taxes withheld until taxable year 1977. He reasoned that if

¹ The date on the Statement of Audit Changes is partially obliterated. The date, as stated, appears correct as best as can be determined.

² The Statement of Audit Changes shows personal income tax due New York State of \$78.00, plus personal income tax due New York City of \$10.00, for a total due of \$88.00.

the excess is taxable at all, it should be in 1977, since for Federal purposes said excess was returned in 1977 in the form of a tax credit claimed on his 1976 Federal return.

CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

B. That section 612(c) of the Tax Law provides for modifications reducing federal adjusted gross income.

C. That an excess in social security taxes withheld from compensation is not one of the modifications provided for under section 612(c) of the Tax Law. Accordingly, such modification, as claimed by petitioners, was improper, and its disallowance by the Audit Division is hereby sustained.

D. That section 1303 of the Tax Law provides that:

"The city taxable income of a city resident individual shall mean and be the same as his New York taxable income..."

Accordingly, the modification in question was properly disallowed for New York City income tax purposes.

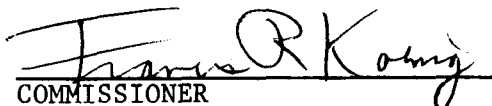
E. That the petition of Jerry Cosentino and Helga Cosentino is denied and the Notice of Deficiency dated October 29, 1980 is sustained together with such additional penalties and interest as may be lawfully owing.

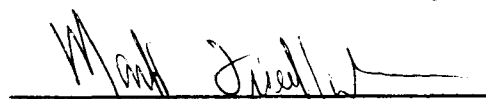
DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER