

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Nicolae & Anka Dini

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS & NYC Income Tax
under Article(s) 22 & 30 of the Tax Law :
for the Year 1980.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 27th day of March, 1986, he/she served the within notice of decision by certified mail upon Nicolae & Anka Dini the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nicolae & Anka Dini
1 Bogardus Place #7J
New York, NY 10040

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
27th day of March, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 27, 1986

Nicolae & Anka Dini
1 Bogardus Place #7J
New York, NY 10040

Dear Mr. & Mrs. Dini:

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

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| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| NICOLAE DINI AND ANKA DINI | : | 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 1980. | : | |

Petitioners, Nicolae Dini and Anka Dini, 1 Bogardus Place, Apt. #75, New York, New York 10040, 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 1980 (File No. 47967).

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 November 19, 1985 at 3:00 P.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

- I. Whether petitioners are liable for the payment of interest.
- II. Whether petitioners' liability for the year 1980 may be recomputed on the basis of separate returns instead of on a joint return basis.

FINDINGS OF FACT

1. Petitioners, on April 11, 1981, timely filed a joint New York State and City income tax resident return for the year 1980. On said return, petitioners reported a total New York income of \$17,950.00 and a Federal adjusted gross income of \$46,273.00.

2. On May 31, 1983, the Audit Division issued a Statement of Audit Changes to petitioners which contained the following explanation:

"As a New York State resident you are taxable on income received from all sources, whether it is earned from within or without New York State.

Based on this (sic) New York State Tax Law, and a verification from the Federal Government on your total earnings for 1980, we have recomputed your 1980 New York State income tax liability."

The Audit Division recomputed petitioners' 1980 liability by increasing reported total New York income to \$46,273.00, the amount of petitioners' reported Federal adjusted gross income.

3. Based on the aforementioned Statement of Audit Changes, the Audit Division, on September 1, 1983, issued a Notice of Deficiency ("Notice") to petitioners for the year 1980. Said Notice asserted additional New York State and City personal income tax due of \$4,253.65, plus interest of \$1,148.87, for a total due of \$5,402.52. The Notice also allowed petitioners credit for a payment of \$4,253.65, leaving only the interest of \$1,148.87 as a balance due.

4. Petitioners do not dispute that the Audit Division correctly computed total New York income to be \$46,273.00; however, they maintain that this figure was adequately disclosed on their return and that it should not have taken the Audit Division approximately two and one-half years after their return was filed to issue the Notice of Deficiency. Petitioners believe that they should not be liable for the payment of interest due to the Audit Division's delay in the issuance of the Notice of Deficiency.

5. Petitioners also argue that their 1980 liability should be recomputed on a separate return basis instead of on the basis of a joint return. Petitioners' total New York income and taxable income, recomputed on the basis of separate returns, is shown in the following table:

| | <u>Husband</u> | <u>Wife</u> |
|--------------------------|--------------------|--------------------|
| Total New York income | \$28,840.31 | \$17,433.10 |
| Less: New York deduction | (2,918.00) | -0- |
| New York exemption | (750.00) | (750.00) |
| New York taxable income | <u>\$25,172.31</u> | <u>\$16,683.10</u> |

CONCLUSIONS OF LAW

A. That there is no provision in the Tax Law or Administrative Code of the City of New York which permits interest charges to be waived, abated or cancelled. Accordingly, petitioners are liable for the payment of interest.

B. That petitioners are entitled to change their election from a joint return to that of separate returns (Matter of Lamonte Kennedy and Valerie Kennedy, State Tax Comm., January 9, 1981 and Matter of Peter W. Liu and Lydia W. Liu, State Tax Comm., November 27, 1981). Accordingly, the Audit Division is directed to recompute petitioners' 1980 New York State and City personal income tax liabilities using the taxable incomes set forth in Finding of Fact "5", supra.

C. That the petition of Nicolae Dini and Anka Dini is granted to the extent indicated in Conclusions of Law "B", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 27 1986


PRESIDENT


COMMISSIONER


COMMISSIONER