

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Charles & Sally W. (dec'd) Gidaro : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article(s) 22 of the Tax Law for the :  
Year 1981.

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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 4th day of April, 1986, he/she served the within notice of Decision by certified mail upon Charles & Sally W. (dec'd) Gidaro the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles & Sally W. (dec'd) Gidaro  
249 East Ave.  
Mt. Carmel, PA 17851

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  
4th day of April, 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

April 4, 1986

Charles & Sally W. (dec'd) Gidaro  
249 East Ave.  
Mt. Carmel, PA 17851

Dear Mr. Gidaro:

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 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	:	
CHARLES AND SALLY (DECEASED) GIDARO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of the	:	
Tax Law for the Year 1981.	:	

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Petitioners, Charles and Sally (deceased) Gidaro, 249 East Avenue, Mount Carmel, Pennsylvania 17851, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1981 (File No. 55436).

Petitioners waived their right to a hearing and requested that a decision be rendered based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioners are entitled to an additional refund of tax.

FINDINGS OF FACT

1. On June 14, 1984, the Audit Division issued against petitioners a Notice and Demand for Payment of Income Tax Due in the amount of \$219.00 plus interest for the year 1981.

2. Petitioners timely filed a joint New York State Nonresident Income Tax Return for 1981 reporting a New York taxable income of \$28,292.80 with a tax due thereon of \$1,243.92. Mr. Gidaro's employer withheld \$1,882.70 in state and local taxes; thus, petitioners applied for a refund of \$638.70.

3. Upon receipt of petitioners' return, the Audit Division recomputed the tax due using a standard deduction of \$2,500.00. This was done because petitioners had claimed a total itemized deduction of \$7,275.00 but had not completed schedule C itemizing their claims. The Audit Division determined that petitioners were entitled to a refund of \$57.66 plus interest. Petitioners were sent a check in the amount of \$59.88 and an explanation of the change.

4. Petitioners returned the refund check with a letter which listed itemized deductions as they appeared on the petitioners' federal return for 1981. On the basis of this information, the Audit Division again recomputed petitioners' tax liability, determining a tax due of \$1,442.02. Since petitioners had paid a tax of \$1,882.70, their refund totalled \$460.68. The Audit Division authorized a refund in that amount but transferred \$364.43 of the total refund amount to a prior assessment, number F8210154171, leaving a net refund to petitioners of \$96.25, plus interest of \$11.62, for a total of \$107.87.

5. The basis of assessment number F8210154171 was an adjustment to petitioners' 1978 New York tax return to conform with federal audit adjustments.

6. In February 1983, petitioners filed an amended tax return for 1981 reporting total New York taxes due of \$1,641.52 and claiming a refund of \$241.18. The Audit Division conceded that the reported tax due accurately represented petitioners' joint tax liability for 1981 but recalculated their refund as follows:

Total tax withheld <sup>1</sup>	\$1,883.00
Amount previously refunded to petitioners (\$364.43 applied to prior assessment + \$96.25 refunded to petitioners)	- 461.00
Tax paid	\$1,422.00
Tax due per amended return	-1,641.00
Deficiency	\$ 219.00

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1 All amounts were rounded to the nearest whole number by the Audit Division.

7. In August 1984, petitioners filed a second amended return which was identical to the first amended return except that all numbers were rounded off to the nearest whole.

8. Petitioners base their claim for an additional refund on the ground that the Audit Division incorrectly adjusted their 1978 return. They submitted no documents to support their claim.

CONCLUSIONS OF LAW


A. That petitioners have failed to sustain their burden of proof, imposed by section 689(e) of the Tax Law, to show that the Audit Division's computations were erroneous.

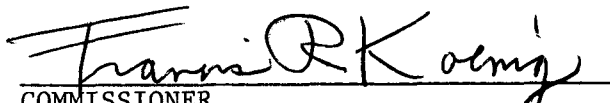
B. That the petition of Charles and Sally (deceased) Gidaro is in all respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA-36 (9/76)

State of New York - Department of Taxation and Finance  
Tax Appeals BureauREQUEST FOR BETTER ADDRESS

Requested by Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request  5/12/86
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec. 4/4/86
Name Charles Sally W. (dec'd) Gidaro	
Address 249 East Ave. Mt. Carmel, PA 17851	

## Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Refused

Searched by  DP	Section	Date of Search  5/12/86
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (7/85)

STATE OF NEW YORK

State Tax Commission  
TAX APPEALS BUREAU

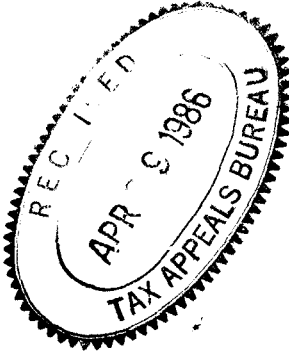
W. A. Harriman Campus  
ALBANY, N.Y. 12227

Fold at line over top of envelope to the right  
of the return address

**CERTIFIED**

P 319 373 612

**MAIL**



Charles & Sally W. (dec'd) Gidaro  
249 East Ave.  
Mt. Carmel, PA 17851

*[Handwritten signature]*

*[Handwritten "F"]*

*[Handwritten "X"]*

*[Handwritten "DS"]*

*[Handwritten "4-1-86"]*

CE

CE

04.11

49-A

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

April 4, 1986

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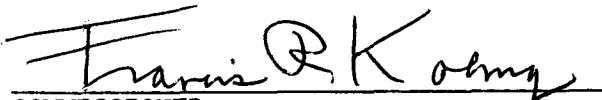
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