

STATE TAX COMMISSION

In the Matter of the Petition
of
Stanislaus Kedzierski & Zelinda Kedzierski

AFFIDAVIT OF MAILING

for Redetermination of Deficiencies or for
Refunds 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.

State of New York :
County of Albany : ss.:

David Parchuck/Janet M. Snay, 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 14th day of November, 1986, he/she served the within notice of Decision by certified mail upon Stanislaus & Zelinda Kedzierski the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanislaus & Zelinda Kedzierski
58 Arcadia Place
Staten Island, New York 10310

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
14th day of November, 1986.

David Paroluck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Shree

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

November 14, 1986

Stanislaus & Zelinda Kedzierski
58 Arcadia Place
Staten Island, New York 10310

Dear Mr. & Mrs. Kedzierski:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

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	:	
STANISLAUS KEDZIERSKI AND ZELINDA KEDZIERSKI	:	DECISION
for Redetermination of Deficiencies or for	:	
Refunds 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 and 1981.	:	

Petitioners, Stanislaus Kedzierski and Zelinda Kedzierski, 58 Arcadia Place, Staten Island, New York 10310, filed a petition for redetermination of deficiencies or for refunds 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 and 1981 (File Nos. 55656 and 61093).

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 June 20, 1986 at 10:00 A.M. Petitioner Zelinda Kedzierski appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the full amount of state and local income taxes claimed by petitioners as itemized deductions on their Federal income tax returns must be subtracted out in determining New York itemized deductions.

FINDINGS OF FACT

1. Petitioners, Stanislaus Kedzierski and Zelinda Kedzierski, timely filed separate New York State and City resident income tax returns for the years 1980 and 1981. For 1980, petitioners computed a New York itemized deduction of \$7,145.69 by subtracting \$3,835.32 of state and local income taxes from total Federal itemized deductions of \$10,981.01. For 1981, a New York itemized deduction of \$5,814.30 was computed by subtracting \$4,146.39 of state and local income taxes from total Federal itemized deductions of \$9,960.69. On their 1980 and 1981 Federal income tax returns petitioners claimed as itemized deductions for state and local income taxes the sums of \$4,220.70 and \$4,810.01, respectively.

2. On December 15, 1983, the Audit Division issued a Statement of Audit Changes to petitioners for 1980 wherein New York itemized deductions claimed by Mr. Kedzierski were reduced by \$385.00. A second Statement of Audit Changes was issued to petitioners for the year 1981 on August 27, 1984, wherein New York itemized deductions claimed by Mrs. Kedzierski were reduced by \$664.00. Both of the aforementioned reductions were based on the Audit Division's position that the total amount claimed by petitioners as itemized deductions for state and local income taxes on their Federal returns must be subtracted out, pursuant to Tax Law §615(c)(1), in computing New York itemized deductions.

3. Based on the above mentioned statements of audit changes, the Audit Division issued three notices of deficiency to petitioners for the years 1980 and 1981. The first notice was dated April 5, 1984 and asserted that Mr. Kedzierski owed \$92.40 of New York State and City personal income tax for the year 1980 plus interest. The second notice, also dated April 5, 1984, asserted that

Mrs. Kedzierski owed \$64.01¹ of New York State personal income tax for the year 1980, plus interest. The third notice, dated February 26, 1985, asserted that Mrs. Kedzierski owed \$108.31 of New York State and City personal income tax for the year 1981, plus interest.

4. The following table details the manner in which petitioners computed the itemized deduction for state and local income taxes as claimed on their Federal income tax returns:

	<u>1980</u>	<u>1981</u>
State & local income taxes paid through payroll deductions	\$3,835.32	\$4,146.39
State & local income taxes paid in 1980 for balance due on 1979 return	385.38	
State & local income taxes paid in 1981 for balance due on 1980 return		663.62
TOTAL	<u>\$4,220.70</u>	<u>\$4,810.01</u>

5. It is petitioners' position that the amounts paid to New York for the balances due on their 1979 and 1980 returns, and claimed as itemized deductions on their 1980 and 1981 Federal returns, should not have to be subtracted out in determining New York itemized deductions. Petitioners maintain that if they are required to subtract these amounts, it results in double taxation.

CONCLUSIONS OF LAW

A. That Tax Law §615(a) provides that the New York itemized deduction of a resident individual means the total amount of a taxpayer's Federal deductions, with specific modifications provided for in subsections (b) and (c) of section 615. Tax Law §615(c) provides, in pertinent part, as follows:

"The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

1 In computing Mrs. Kedzierski's liability for 1980, the Audit Division failed to consider the maximum tax benefit to which she was entitled pursuant to Tax Law §603-A.

(1) income taxes imposed by this state or any other taxing jurisdiction".

B. That 20 NYCRR 117.11 provides, in pertinent part, that:

"The total amount of itemized deductions from Federal adjusted gross income must be reduced by the amount of Federal deductions for:

(a) Income taxes imposed by New York State or any other state, or by any other taxing authority. This modification eliminates from Federal itemized deductions the amount of any income taxes included therein, regardless of the identity of the taxing jurisdiction, as the New York State Personal Income Tax Law does not allow the deduction of income taxes."

C. That the Audit Division properly computed petitioners' New York itemized deductions for the years 1980 and 1981 inasmuch as the total amount of state and local income taxes included in Federal itemized deductions must, with a minor exception not applicable herein, be subtracted out in determining New York itemized deductions.


D. That pursuant to footnote 1, supra, the Audit Division must recompute Mrs. Kedzierski's 1980 liability allowing her the maximum tax benefit pursuant to Tax Law §603-A.


E. That the petition of Stanislaus Kedzierski and Zelinda Kedzierski is granted to the extent indicated in Conclusion of Law "D", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1986


PRESIDENT


COMMISSIONER


COMMISSIONER