

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions

of

EDWARD A. AND DORIS ZELINSKY

for Redetermination of Deficiencies or for Refund of
Personal Income Tax under Article 22 of the Tax Law for
the Years 2019 and 2020.

ORDER
DTA NOS. 830517
AND 830681

Petitioners, Edward A. and Doris Zelinsky, filed petitions for redetermination of deficiencies or for refund of personal income tax under article 22 of the Tax Law for the years 2019 and 2020.

On October 4, 2022, petitioners, by Edward A. Zelinsky, Esq., brought a motion seeking consolidation of their two petitions in the above-captioned matter. On October 20, 2022, the Division of Taxation, by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel), submitted an affirmation in response to the motion. Based upon the motion papers and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following order.

ISSUE

Whether the two petitions filed by petitioners should be consolidated.

FINDINGS OF FACT

1. On June 30, 2021, petitioners, Edward A. and Doris Zelinsky, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax for the year

2019. The substance of petitioners' petition is a challenge to New York's "convenience of the employer" doctrine. That matter was assigned DTA number 830517.

2. On September 28, 2021, petitioners filed another petition for redetermination of a deficiency or for refund of New York State personal income tax for the year 2020. The substance of this petition is also a challenge to New York's "convenience of the employer" doctrine. That matter was assigned DTA number 830681.

3. Both DTA numbers 830517 and 830681 have similar facts.

4. Petitioners have filed the instant motion seeking consolidation of matters DTA numbers 830517 and 830681.

5. The Division of Taxation (Division) does not oppose consolidation of the matters.

CONCLUSIONS OF LAW

A. Petitioners have moved for consolidation of their two pending matters. 20 NYCRR 3000.5 (a) allows for such motions, and further states that the Tax Appeals Tribunal and administrative law judge shall be guided by the CPLR in resolving such motions.

B. CPLR § 602 states:

"Consolidation. (a) Generally. When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

C. Here, petitioners assert that common questions of law and fact are present in the two pending matters and that consolidation will help avoid any unnecessary costs or delay. A review of the pleadings confirms that conclusion. Moreover, the Division does not oppose the motion. Thus, judicial economy dictates that consolidation is appropriate.

D. Petitioners' motion for consolidation is granted. DTA numbers 830517 and 830681 are hereby consolidated and a hearing will be scheduled in due course.

DATED: Albany, New York
November 17, 2022

/s/ Herbert M. Friedman, Jr.
SUPERVISING ADMINISTRATIVE LAW JUDGE