

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JACOB MILLER AND MARION MILLER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax Under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioner Marion Miller, 10090 SW 67th Avenue, Miami, Florida 33156 filed an exception to the determination of the Administrative Law Judge issued on August 2, 1990 with respect to the petition of Jacob Miller and Marion Miller for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 800077). Petitioner appeared by Sheldon G. Kall, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Mark F. Volk, Esq., of counsel).

Neither party filed a brief on exception. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner Marion Miller is entitled to relief, as an innocent spouse, from income tax due on the 1974 joint New York State resident income tax return filed by petitioners.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioners, Jacob Miller and Marion Miller, timely filed a joint 1974 New York State resident income tax return. The Division of Taxation ("Division") audited this return and determined unreported income in the amount of \$171,943.00. Based upon this understatement of income, the Division calculated income tax due on the 1974 joint income tax return of

\$23,898.70. Consequently, on November 13, 1978, the Division issued to petitioners a Notice of Deficiency for the year 1974, asserting a personal income tax deficiency of \$23,898.70 plus penalty and interest.

On April 8, 1978, petitioners executed a consent which extended the period of limitation for fixing personal income tax for the year ended December 31, 1974 to April 15, 1979.

At the time of the audit, Mr. Miller was the sole shareholder of Moto-Tech, Inc., a closely held corporation which owned a Honda Motorcycle sales dealership. The Division audited this business using the bank deposit analysis method. The Division determined that the business had unreported gross receipts in 1974 of approximately \$172,000.00. Most of this amount was determined to be loans made by Mr. Miller to the corporation. These loans then were attributed to Mr. Miller as personal income in 1974.

After the issuance of the notice of deficiency, petitioners provided documentation sufficient to substantiate that \$16,800.00 of the unreported receipts were attributable to loans received in 1974 from the Solvay Bank and that \$25,666.00 of the understatement was attributable to loans made to Moto-Tech, Inc., before January 1, 1974. The Division therefore agreed to recalculate the tax due on the basis of an understatement of income in the amount of \$129,477.00.

Before the commencement of this administrative hearing, Mr. Jacob Miller died. The exact date of his death is unknown. Although the petition raised a variety of issues regarding the audit method and results, the only issue raised in this proceeding is whether Mrs. Miller is entitled to relief as an innocent spouse.

The audit workpapers state that Mrs. Miller worked in the office of the Honda dealership, but the basis for this information is not in the record.

The only evidence submitted by petitioners was the affidavit of Mrs. Miller in which she alleged the following facts:

- (a) that she had no knowledge of the 1974 tax deficiency until after her husband's death;

(b) that she had no knowledge of the items included in the 1974 tax return and did not participate in its preparation;

(c) that she signed the tax return at the direction of her husband and had no reason to question its accuracy;

(d) that the amount of the understatement of income is "an astounding amount" which cannot be accurate;

(e) that she is a 75 year old widow without the resources to pay the tax deficiency.

OPINION

The Administrative Law Judge determined that the petitioner failed to meet the burden of proving that she was entitled to relief as an innocent spouse under section 651(b)(5)(i) of the Tax Law. Specifically, the Administrative Law Judge determined that the only evidence offered by petitioner was her own affidavit and that standing alone this was inadequate to prove that all of the requirements of the innocent spouse provisions of the law were met.

On exception, petitioner Marion Miller (hereinafter "petitioner") argues that the Division has not shown that the affidavit she submitted was inadequate to prove the requirements of an innocent spouse.

The Division states that it concurs with the Administrative Law Judge's determination.

We affirm the determination of the Administrative Law Judge.

For the period in issue Tax Law former § 651(b)(5)(i) provided that:

"Under regulations prescribed by the tax commission, if

(A) a joint return has been made . . . for a taxable year and on such return there was omitted from New York adjusted gross income an amount properly included therein which is attributable to one spouse and which is in excess of twenty-five percent of the amount of New York adjusted gross income stated in the return,

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of such omission and

(C) taking in account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from New York adjusted gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable

for the deficiency in tax for such taxable year attributable to such omission, then the other spouse shall be relieved of liability for tax (including interest, penalties and other amounts) for such taxable year to the extent that such liability is attributable to such omission from New York adjusted gross income."

The burden on petitioner here is to prove she met the requirements of the statute. Failure to prove that the non-offending spouse did not benefit significantly from the income not included on the State return will not automatically deny innocent spouse status to such spouse (see, Matter of Sabatine, Tax Appeals Tribunal, August 25, 1988). However, we find under the facts and circumstances presented here that petitioner has failed to sustain her burden to establish that she did not know of and had no reason to know of the omission of income by Jacob Miller or that she did not significantly benefit directly or indirectly from the omitted income.

In Sabatine, based on all the facts and circumstances presented, this Tribunal found it would be inequitable to hold the petitioner liable for the deficiency in tax. Furthermore, the petitioner was able to prove that she did not significantly benefit from the omitted income. In the situation before us now, however, petitioner did not present any evidence or testimony to overcome her burden of proving that she did not know of the omitted income and did not benefit directly or indirectly from it. Petitioner did not introduce any evidence or testify at hearing that she did not experience any increase in her standard of living, receive any lavish gifts or receive any additional money during the period in issue. The affidavit submitted by petitioner only states that the amount of the understatement of income is an "astounding amount" and that her husband never had this kind of money. Therefore, we conclude that petitioner is not entitled to relief as an innocent spouse.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Marion Miller is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Jacob Miller and Marion Miller is granted to the extent indicated in conclusions of law "B" and "C" of the Administrative Law Judge's determination but is otherwise denied; and

4. The Division of Taxation is directed to modify the Notice of Deficiency issued on November 13, 1978 in accordance with paragraph "3" above but such notice is otherwise sustained.

DATED: Troy, New York
February 22, 1991

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner