

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
MARILYN J. BELLOWS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1985.	:	

Petitioner, Marilyn J. Bellows, 76 Division Avenue, Blue Point, New York 11715, filed an exception to the determination of the Administrative Law Judge issued on December 14, 1989 with respect to her petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1985 (File No. 806472). Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq., (Andrew Zalewski, Esq., of counsel).

Petitioner and the Division submitted letters in lieu of briefs on exception. Petitioner's request for oral argument was subsequently withdrawn.

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

ISSUE

Whether petitioner is entitled to a refund of an overpayment of tax which the Division of Taxation applied to a liability of her spouse.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and such facts are restated below.

Petitioner, Marilyn J. Bellows, with her then spouse, timely filed a 1985 New York resident income tax return under filing status, married filing separately on one return. On her

1985 return, petitioner claimed an overpayment of New York State tax in the amount of \$246.76 and requested a refund in that amount.

Petitioner was married to Stephen J. Bellows on December 16, 1985. The Division of Taxation had been notified by the New York State Department of Social Services ("DSS") that Mr. Bellows owed past-due child support. Accordingly, the Division applied petitioner's overpayment of tax to Mr. Bellows' child support liability.

On November 6, 1986, petitioner filed a Claim for Credit or Refund of Personal Income Tax in the amount of \$241.76.¹ The basis for her claim was her contention that her husband had incurred the child support obligation before her marriage; therefore, petitioner did not believe she should be obligated to pay this debt. By letter dated June 29, 1987, the Division denied petitioner's claim for refund.

Petitioner contacted DSS to discover the basis for the child support claim. She was informed that a judgement was entered against Mr. Bellows on April 25, 1975. There is no evidence that Mr. Bellows denied his liability for the past-due support. At the time of filing her 1985 tax return, petitioner was aware that her husband had a child, but she did not know that he had outstanding child support obligations. She did not include with her return a demand that her overpayment of tax not be applied to her husband's past-due support obligations.

OPINION

In the determination below the Administrative Law Judge denied petitioner's request for refund. Specifically, it was determined that because petitioner and her husband filed separate returns on a single form, the Division properly credited petitioner's overpayment to past-due support owed by her husband, as petitioner failed to include a demand to disclaim the debt of her spouse as required under Tax Law § 651(b)(former [4]). On exception, petitioner argues that she

¹ Petitioner failed to include with her 1985 return a wage statement showing wages of \$200.00 and State tax withheld of \$10.00. Three wage statements submitted at hearing show total State income tax withheld of \$249.76. Petitioner's tax liability was \$8.00 (which she failed to subtract from tax withheld in calculating her refund claim on the 1985 return). Thus, the total overpayment of tax amounted to \$241.76.

had no knowledge of the existence of child support payments owed by her husband. Therefore, she should not be required to make such a demand.

In response, the Division relies upon the determination of the Administrative Law Judge.

We affirm the determination of the Administrative Law Judge.

Tax Law former § 651(b)(4)(B) states in relevant part:

"If husband and wife file separate New York income tax returns on a single form . . . an overpayment by a spouse and interest thereon shall be credited against past-due support . . . unless the return of the spouse not liable for past-due support includes a demand that the overpayment and interest not be credited against the past-due support" (emphasis added).

Petitioner states that she had no knowledge of her spouse's support debt. Given this fact, she contends that she should not be penalized for failing to file a demand with her return to disclaim such debt when to her knowledge none existed. While her situation is unfortunate, we agree with the Administrative Law Judge that there is no provision in the Tax Law which would allow the waiver of the statutory requirement set forth in Tax Law § 651(b)(former [4]).

Petitioner further contends that the Administrative Law Judge's reference to 20 NYCRR 145.10(f) in support of the determination is misplaced. The regulation states that "a spouse may not file an amended New York State personal income tax return to make such a demand."

Petitioner appears to claim that because the regulation prohibits only amending a return to disclaim a spouse's debt, it implicitly endorses the use of other means to accomplish this end. We find this argument to be without merit. This regulation was written specifically to interpret Tax Law § 651(b). We must, therefore, examine this statute to determine whether petitioner's reading of the regulation is consistent therewith. "[S]tatutes . . . are to be read according to the natural and obvious import of their language without resorting to subtle or forced construction either limiting or extending their effect" (Cooper-Snell Co. v. State of New York, 230 NY 240, 129 NE 893). Petitioner's strained reading of 20 NYCRR 145.10(f) attempts to create alternative means to avoid a spouse's support liability where the statute explicitly provides only one. As a

claim for credit is not a method specifically set forth in Tax Law § 651(b) (former [4]), we find that the regulation does not act to expand the means available to petitioner to disclaim her spouse's debt.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

1. The exception of petitioner, Marilyn J. Bellows, is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Marilyn J. Bellows is denied; and
4. The Division of Taxation's denial of petitioner's claim for a refund is sustained.

DATED: Troy, New York
September 27, 1990

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

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