

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JOHN P. AND ELEANOR FORD	:	DECISION
	:	DTA No. 809734
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22 of	:	
the Tax Law and New York City Personal Income Tax	:	
under the Administrative Code of the City of New York	:	
for the Year 1980.	:	

Petitioner John P. Ford,¹ 4898 Broadway, New York, New York 10034, filed an exception to the determination of the Administrative Law Judge issued on April 1, 1993. Petitioner appeared by Brian Bergman, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Lawrence A. Newman, Esq., of counsel).

Petitioner filed a brief with his exception. The Division of Taxation filed a brief in opposition. Petitioner was given until May 26, 1993 to file a reply brief. No reply was filed by petitioner and, therefore, the six-month period to issue this decision began on May 26, 1993.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether, under the circumstances presented herein, the Division of Taxation properly imposed interest on an income tax deficiency.

FINDINGS OF FACT

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

¹Petitioner Eleanor Ford passed away on August 20, 1992. Therefore, all references to petitioner are to John P. Ford.

On January 20, 1988, petitioners, John P. and Eleanor Ford, consented to Federal personal income tax deficiencies for the years 1980 and 1982 by signing Internal Revenue Service Form 870-AD. The deficiencies were the result of the Internal Revenue Service increasing petitioners' Federal adjusted gross income for 1980 to \$71,767.00 and for 1982 to \$49,236.00.

Petitioners filed U.S. individual income tax returns for the years 1980 and 1982. On these returns, they elected a filing status of "Married filing joint return." The address listed on the 1980 return was "511 West 33rd St., New York, NY 10001." Petitioners filed a 1982 New York State Income Tax Resident Return but failed to file a 1980 New York State Income Tax Resident Return.

On October 12, 1988, the Division of Taxation ("Division") issued a Statement of Audit Changes which explained that petitioners had a deficiency of personal income tax. The statement provided as follows:

"Information furnished by the Internal Revenue Service, under authorization of section 6103(D) of the Internal Revenue Code, indicates that you filed a federal tax return using a New York State address.

"A search of our files fails to show a New York State Income Tax Return filed under your name or social security number. Therefore, your New York State Tax is estimated as allowed by New York State Income Tax Law."

The Division computed petitioners' New York State and City income tax liability for the years 1980 and 1982 using the Federal adjusted gross income as agreed to by petitioners. Penalties, pursuant to Tax Law § 685(a)(1), (2) and (c), and interest were also imposed.

On the basis of the Statement of Audit Changes, the Division issued a Notice of Deficiency to petitioners. The notice, dated January 13, 1989, asserted that New York State and City personal income tax for the years 1980 and 1982 was due in the amount of \$17,058.29, plus penalty of \$9,019.70 and interest of \$14,674.77, for a total amount due of \$40,752.76.

On May 24, 1991, the Bureau of Conciliation and Mediation Services issued a Conciliation Order to petitioners recomputing the Notice of Deficiency by eliminating the year

1982 and cancelling all penalties because it was discovered that petitioners had in fact filed a New York State Income Tax Resident Return for such year. The tax amount remaining at issue for 1980 is \$10,561.36, plus interest.

OPINION

The Administrative Law Judge found that interest was properly imposed on the income tax deficiency. Further, the Administrative Law Judge found that there is no statutory authority for the abatement of interest imposed pursuant to Tax Law § 684(a).

On exception, petitioner asserts that he timely filed his 1980 New York State Resident Income Tax Return. Petitioner has resubmitted a copy of that income tax return with his exception.

In response, the Division asks that the Administrative Law Judge's determination be affirmed. The Division states that petitioner was not able to produce proof of the filing of a tax return for 1980.

We affirm the determination of the Administrative Law Judge.

Petitioner argues on exception that a 1980 New York State Resident Income Tax Return was filed. However, this argument must be rejected as petitioner has not submitted any evidence to show that a return for that year was filed, e.g., a cancelled check for the amount of tax due.

After reviewing the allegations presented to us on exception and the record before us, we find no basis for modifying the Administrative Law Judge's determination in any respect. Therefore, as stated above, we affirm the determination of the Administrative Law Judge for the reasons stated in said determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of John P. and Eleanor Ford is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of John P. and Eleanor Ford is denied; and

4. The Notice of Deficiency, as recomputed by the Conciliation Order, is sustained.

DATED: Troy, New York
October 7, 1993

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner