

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :

of :

**GEORGE AND DOLORES BAKER** :

DECISION  
DTA NO. 817497

for Redetermination of a Deficiency or for Refund of New :  
York City Personal Income Tax under the Administrative  
Code of the City of New York for the Year 1996. :

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Petitioners George and Dolores Baker, P.O. Box 353235, Palm Coast, Florida 32135-3235, filed an exception to the determination of the Administrative Law Judge issued on April 26, 2001. Petitioners appeared by Binder & Binder, P.C. (Harry J. Binder, Esq., of counsel). The Division of Taxation appeared by Barbara G. Billet, Esq. (Kevin R. Law, Esq., of counsel).

Petitioners filed a brief in support of their exception, the Division of Taxation filed a brief in opposition and petitioners filed a reply brief. Oral argument, at petitioners' request, was heard on October 10, 2001 in Troy, New York.

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

***ISSUE***

Whether the Division of Taxation properly determined that petitioners owed New York City personal income tax on lottery winnings for the year at issue.

***FINDINGS OF FACT***

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

During the years 1990 and 1991 and through March 27, 1992, petitioners, George and Dolores Baker, were residents of the State and City of New York. In 1992, they moved to Florida.

In 1990, while a resident of New York City, petitioner Dolores Baker won a prize in the New York State Lottery.

Petitioners did not accrue to their 1992 New York State Nonresident and Part-Year Resident Income Tax Return the future installments of petitioner Dolores Baker's lottery winnings and pay New York State and New York City tax thereon.

Petitioners did not file a bond or post any other type of security with the Division of Taxation ("Division").

As indicated by a Form W-2G issued to petitioner Dolores Baker at her Florida home, the Division of the Lottery paid petitioner \$222,225.00 in lottery winnings in 1996. Federal, New York State, and New York City income taxes were withheld from this amount. New York State tax so withheld was \$15,834.00. New York City tax withheld was \$9,911.00.

Petitioners timely filed a 1996 New York State nonresident return (Form IT-203) on which they reported the \$222,225.00 in lottery winnings as New York State income. Petitioners reported a New York State tax liability of \$12,721.00 on their 1996 IT-203.

With respect to the 1996 tax year, petitioners did not report and pay New York City personal income tax on their 1996 lottery winnings distribution as if they were still New York City residents in 1996.

Petitioners claimed an overpayment of tax on their 1996 IT-203 in the amount of \$13,024.00.

On May 27, 1997, the Division issued to petitioners the refund amount claimed on their 1996 IT-203.

On May 26, 1998, the Division issued to petitioners a Notice of Deficiency (L-015034503) which asserted City of New York income tax due of \$7,703.00, plus penalty and interest. The deficiency results from the Division's assertion of New York City personal income tax on the lottery winnings paid to petitioner Dolores Baker in 1996.

During the years 1990 through and including 1996, petitioners were cash basis taxpayers.

Petitioners retained their present representative, Binder and Binder P.C., to prepare their 1996 IT-203.

#### ***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

At the outset, the Administrative Law Judge cited New York City's general statutory scheme which provides that when a taxpayer changes his or her status from a New York City resident to a New York City nonresident, that taxpayer's final resident income tax return is subject to the special accrual provisions of the Administrative Code of the City of New York § 11-1754.

That section provides, in relevant part, as follows:

(a) General. If an individual changes his or her status during his or her taxable year from city resident to city nonresident . . .

such individual shall file one return as a resident for the portion of the year during which he or she is a city resident, and a return under chapter nineteen of this title, for the portion of the year during which he or she is a city nonresident.

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(c) Special accruals.

(1) If an individual changes his or her status from city resident to city nonresident, he or she shall, *regardless of his or her method of accounting*, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for city income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections 11-1712 and 11-1715 as if such accrued items were includible or allowable for federal income tax purposes.

This general scheme for city residents who become nonresidents goes on to provide that city residents who become nonresidents may “opt out” of the above special accrual requirement by taking affirmative action and posting a bond or other security (Administrative Code § 1754[c][4]).

However, as the Administrative Law Judge noted, the City has a different set of rules for lottery winners who change their status from city resident to city nonresident (citing, Administrative Code § 11-1771). Specifically, Administrative Code § 11-1771(b)(2)(D) requires withholding of City income tax on lottery winnings in excess of \$5,000.00 if the winner was a resident of the City at the time of the lottery drawing. Additionally, the Administrative Law

Judge pointed out, Administrative Code § 11-1771(b)(3)(B) permits taxpayers who are recipients of lottery winnings to substitute withholding from their winnings in lieu of “a bond or other security” as follows:

Withholding on lottery winnings upon change of residence. If a payee of lottery winnings . . . changes status from resident to nonresident, withholding . . . shall constitute other security acceptable to the commissioner of taxation and finance within the meaning of paragraph four of subdivision (c) of section 11-1754, *unless such payee elects*, in such manner as the commissioner of taxation and finance shall prescribe, *to apply the provisions of paragraph one of such subdivision (c) to the proceeds, in which case withholding under this subdivision shall no longer apply to such proceeds* (emphasis added).

The Administrative Law Judge found that the effect of these provisions is that lottery winners who change their status from city resident to city nonresident are not subject to the special accrual provisions of Administrative Code § 11-1754(c) unless they “opt in” to such special accrual provisions. Here, the Administrative Law Judge determined that petitioners did not make an election under Administrative Code § 11-1771(b)(3)(B). Accordingly, the Administrative Law Judge concluded that City income tax was properly withheld on petitioner Dolores Baker’s lottery winnings for the year at issue. The Administrative Law Judge found that given petitioners’ failure to report their lottery winnings on their 1996 return as income subject to the city income tax, the Division properly asserted a deficiency of New York City personal income tax for that year.

The Administrative Law Judge rejected petitioners’ argument that the special accrual provisions of Administrative Code § 11-1754(c) applied to the instant matter. The Administrative Law Judge found that petitioners’ argument ignores the plain language of the statute which requires the withholding of lottery winnings under the present circumstances

(Administrative Code § 11-1771[b][2][D] and [3][B]). The Administrative Law Judge concluded that contrary to petitioners' argument, the required withholding of city income tax on the lottery winnings establishes that such payments were properly subject to city income tax in 1996 (*citing*, Administrative Code § 11-1771[a][1]; § 11-1773).

Petitioners also contended that penalty asserted in the statutory notice should be abated because they acted in good faith and relied on the advice of counsel. Petitioners submitted no evidence in support of this contention. There being nothing in the record to support petitioners' claim of reasonable cause, other than petitioners' general assertion that they were acting on the advice of counsel, the Administrative Law Judge concluded that petitioners had failed to meet their burden of proof on this issue.

The Administrative Law Judge denied the petition and sustained the Notice of Deficiency.

### ***ARGUMENTS ON EXCEPTION***

Petitioners did not take exception to any particular finding of fact or conclusion of law, but argue, as they did below, that:

Their change in resident status in 1992, from city residents to city nonresidents, triggered the special accrual provisions of New York City Administrative Code § 11-1754(c). Petitioners assert that, pursuant to these provisions, the entire unpaid portion of the lottery winnings were subject to accrual and, therefore, payable in 1992. Petitioners further assert that because the entire amount of lottery winnings were subject to accrual and, therefore, subject to city income tax in 1992, petitioners were not required to report winnings paid in 1996 as income subject to city income tax on their 1996 return.

Petitioners also claim that, if the deficiency herein is sustained, penalty asserted in the statutory notice should be canceled because they relied on the advice of their attorney in filing their 1996 return.

***OPINION***

After a thorough review of the record and the arguments made thereon, we find that the Administrative Law Judge has completely and adequately addressed each of the arguments raised by petitioners. We affirm the determination of the Administrative Law Judge for the reasons stated therein. Petitioners have offered no arguments on appeal that would justify our modifying the determination of the Administrative Law Judge in any respect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of George and Dolores Baker is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of George and Dolores Baker is denied; and
4. The Notice of Deficiency dated May 26, 1998 is sustained.

DATED: Troy, New York  
March 7, 2002

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/s/Donald C. DeWitt

Donald C. DeWitt  
President

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/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner

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/s/Joseph W. Pinto, Jr.

Joseph W. Pinto, Jr.  
Commissioner