

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition

of

MICHAEL A. GOLDSTEIN A NO. 1 TRUST

for Redetermination of a Deficiency or for Refund
of New York State Personal Income Tax under
Article 22 of the Tax Law for the Years 1995, 1996
and 1997.

In the Matter of the Petition

of

MICHAEL A. GOLDSTEIN "I" NO. 2 TRUST

for Redetermination of a Deficiency or for Refund
of New York State Personal Income Tax under
Article 22 of the Tax Law for the Years 1995, 1996
and 1997.

In the Matter of the Petition

of

**MICHAEL A. GOLDSTEIN -
BORIS GOLDSTEIN NO. 3 TRUST**

for Redetermination of a Deficiency or for Refund
of New York State Personal Income Tax under
Article 22 of the Tax Law for the Years 1995, 1996
and 1997.

DECISION
DTA Nos. 822579,
822666 and 822681

Petitioners, Michael A. Goldstein A No. 1 Trust, Michael A. Goldstein “I” No. 2 Trust, and Michael A. Goldstein - Boris Goldstein No. 3 Trust filed an exception to the determination of the Administrative Law Judge issued on April 15, 2010. Petitioners appeared by Samson Management, LLC (Ray W. Cruz, Esq., CPA). The Division of Taxation appeared by Mark Volk, Esq. (Robert Tompkins, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioners filed a letter brief in lieu of a formal reply brief. Oral argument, at petitioners’ request, was held on January 19, 2011 in New York, New York.

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

ISSUES

I. Whether the Division of Taxation properly paid interest to petitioners on overpayments of tax resulting from federal changes from the date of the filing of amended returns or, in the alternative, whether such interest should have been paid from the date of the filing of the original returns for the years at issue.

II. Whether petitioners have proven that they are entitled to refunds of New York City tax.

III. Whether the Tax Law that determines the interest on overpayments and underpayments violates the U.S. and New York State constitutions.

IV. Whether the Division of Tax Appeals has jurisdiction over the rates of interest charged to taxpayers on underpayments of tax and interest paid to taxpayers on overpayments of tax.

FINDINGS OF FACT

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

MICHAEL A. GOLDSTEIN A NO. 1 TRUST

In April 2006, the Internal Revenue Service (IRS) issued a form 5278, Statement - Income Tax Change to Michael Adam Goldstein Trust #1 (Trust No. 1), which reduced interest income, thereby reducing taxable income and tax due in the amounts of \$72,088.00 for the year 1995, \$54,553.00 for the year 1996 and \$65,751.00 for the year 1997. On May 18, 2006, Trust No. 1 executed an IRS form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, thereby accepting the aforesaid amounts of tax overpayments.

As a result of the federal changes, Trust No. 1, on or about July 17, 2006, filed amended New York State fiduciary income tax returns that claimed state refunds in the amounts of \$33,638.00, \$28,028.00 and \$24,832.00 for the years 1995, 1996 and 1997, respectively.

On December 15, 2006, the Division of Taxation (Division) issued a Notice of Disallowance to Trust No. 1 for the years 1996 and 1997, and on July 16, 2008, the Division issued a Notice of Disallowance for the year 1995 disallowing the claims for refund,¹ in full, stating, in relevant part, as follows:

The refund requested for additional interest on the above refund previously issued based on a federal audit cannot be allowed.

The interest calculated for the refund issued was based on Section 688 of Article 22 of the New York State Tax Law, prior to tax year 1999.

¹ The Notice of Disallowance for 1995 indicated that the refund issued for that year was \$23,802.47 (the amended return claimed a refund of \$33,638.00). The Notice of Disallowance for 1996 and 1997 does not indicate the amounts of the refunds issued for these years.

Interest on an overpayment from an amended return is calculated from the date the amended return is filed not the date of the original filed return.

According to the amended returns filed for each of the years at issue, the calculation of the overpayment made for each year included tax, interest and penalty on the original return. A footnote in the Division of Taxation's brief states as follows:

It is apparent from the Notices of Disallowance in the record that separate claims for refund of interest were likely made after and in addition to the refund claims (amended returns) made for tax overpayments caused by federal changes of income. The Notices of Disallowance state that they deny the refund claims in full and that the refund request for additional interest on the refunds previously issued based on federal audit cannot be allowed. Tax overpayments due to the federal changes were not disallowed.

The interest paid by the Division to Trust No. 1 was \$541.47 for 1995, \$404.35 for 1996 and \$349.43 for 1997.

On October 21, 2008, Trust No. 1 filed a petition seeking administrative review of the Division's disallowance of its claim for refund of interest from the date of filing of the original returns for the years at issue.

MICHAEL A. GOLDSTEIN "I" NO. 2 TRUST

In April 2006, the IRS issued a form 5278, Statement - Income Tax Change to Michael Adam Goldstein Trust #2 (Trust No. 2), which reduced interest income, thereby reducing taxable income and tax due in the amounts of \$62,762.00 for the year 1995, \$57,889.00 for the year 1996 and \$37,887.00 for the year 1997. On May 11, 2006, Trust No. 2 executed an IRS form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, thereby accepting the aforesaid amounts of tax overpayments.

As a result of the federal changes, Trust No. 2, on or about July 17, 2006, filed amended New York State fiduciary income tax returns that claimed state refunds in the amounts of

\$22,249.00 for 1996 and \$5,202.00 for 1997.²

On December 15, 2006, the Division issued a Notice of Disallowance to Trust No. 2 for the years 1996 and 1997 and, on July 16, 2008, the Division issued a Notice of Disallowance for the year 1995. The Notices contained the same language as those issued to Trust No. 1.

The amended return filed for 1996 indicated that the overpayment included tax, interest and penalties on the original return; the amended return filed for 1997 stated that the overpayment included “tax on original return.”

The interest paid by the Division to Trust No. 2 was \$482.95 for 1995, \$378.94 for 1996 and \$100.72 for 1997.

On December 3, 2008, Trust No. 2 filed a petition seeking administrative review of the Division’s disallowance of its claim for refund of interest from the date of filing of the original returns for the years at issue.

MICHAEL A. GOLDSTEIN - BORIS GOLDSTEIN NO. 3 TRUST

In April 2006, the IRS issued a form 5278, Statement - Income Tax Change to Michael Adam Goldstein Trust #3 (Trust No. 3), which reduced interest income, thereby reducing taxable income and tax due in the amounts of \$54,679.00 for the year 1995, \$56,737.00 for the year 1996 and \$59,964.00 for the year 1997. On May 11, 2006, Trust No. 3 executed an IRS form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, thereby accepting the aforesaid amounts of tax overpayments.

As a result of the federal changes, Trust No. 3, on or about July 17, 2006, filed amended

² An amended return was also filed for the year 1995; however, the Division was unable to locate a copy of the 1995 return and petitioner did not submit a copy at the hearing. As indicated in the Notice of Disallowance issued by the Division for 1995, a refund in the amount of \$21,229.95 was issued to Michael A. Goldstein “I” No. 2 Trust.

New York State fiduciary income tax returns that claimed state refunds in the amounts of \$25,014.00 for 1996 and \$23,928.00 for 1997.³

On December 15, 2006, the Division issued a Notice of Disallowance to Trust No. 3 for the years 1996 and 1997 and, on July 16, 2008, the Division issued a Notice of Disallowance for the year 1995. The notices contained the same language as those issued to Trust No. 1 (see Finding of Fact above).

According to the amended returns filed for 1996 and 1997, the calculation of the overpayment made for each year included “tax and interest on original return.”

The interest paid by the Division to Trust No. 3 was \$432.95 for 1995, \$375.21 for 1996 and \$378.58 for 1997.

On December 9, 2008, Trust No. 3 filed a petition seeking administrative review of the Division’s disallowance of its claim for refund of interest from the date of filing of the original returns for the years at issue.

Since the amended returns filed for each of the trusts were filed within 90 days of the report of the federal changes in accordance with the provisions of Tax Law § 659, the Division paid interest on the overpayments pursuant to Tax Law § 687(c), i.e., interest was computed and paid to each trust from the date of filing of the amended returns claiming such refunds.

Each of the petitions filed in this proceeding states: “NYS Tax Department did not refund the entire NYC tax paid as per the amended returns filed.” The amended returns that are in evidence in this proceeding do not indicate that any of the trusts paid City of New York tax.

³ An amended return was also filed for the year 1995; however, the Division was unable to locate a copy of the 1995 amended return and petitioner did not submit a copy at the hearing. As indicated in the Notice of Disallowance issued by the Division for 1995, a refund in the amount of \$19,031.95 was issued to Michael A. Goldstein - Boris Goldstein No. 3 Trust.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge held that former Tax Law § 688(a)(3) and Tax Law § 697 did not entitle petitioners to interest on their overpayment of taxes for any day before the date on which the amended return or claim was filed. The Administrative Law Judge also found that petitioner would be entitled to relief sought, had the taxable years at issue not been prior to 1999. However, the amendments made to the Tax Law by Chapter 377 of the Laws of 1999 were only made prospectively for tax years beginning January 1, 1999. Accordingly, the Administrative Law Judge sustained the Notices of Disallowance.

ARGUMENTS ON EXCEPTION

On exception, petitioners seek reversal based upon the same arguments as those presented before the Administrative Law Judge. Petitioners argue that the Division should have paid interest on the overpayments of tax made by petitioners from the date of the filing of the original returns for the years at issue, not from the date of the filing of the amended returns that were filed as a result of the federal changes. As a result of the federal changes and the reduction of taxable income of the trusts, the taxable income of the trust's beneficiaries increased. These beneficiaries were required to pay interest from the dates of the filing of their original returns. Petitioners claim that an inequity results because the trusts did not receive interest from the dates of the filing of the original returns. Petitioners claim that, while the Tax Law requires petitioners to report the federal changes to the Division, nothing in the Tax Law requires the filing of an amended return, and, therefore, Tax Law § 688(a)(former [3]) is not applicable in this proceeding.

Petitioners argue, in the alternative, that if Tax Law § 688(a) applies herein and an amended return is filed, then that statute is in conflict with Tax Law § 687(c) and § 688(g).

Petitioners state that an inequity results in the Division's rates of interest because the rate of interest charged to taxpayers who have underpaid taxes is greater than the rate paid to taxpayers who have overpaid their taxes. Petitioners claim that the Division did not properly refund overpayments of New York City tax made by petitioners.

The Division argues that the Administrative Law Judge properly sustained the Notices of Disallowance. It argues that there is no ambiguity in Tax Law § 688 and that petitioners' arguments are ineffectual.

OPINION

We affirm the determination of the Administrative Law Judge.

This matter involves overpayment of tax for the tax years 1995, 1996 and 1997. During those years, Tax Law § 688(a)(former [3]) provided as follows:

Late and amended returns and claims for credit or refund. Notwithstanding the provisions of paragraph one or two of this subsection, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), or claimed on an amended return of tax or claimed on a claim for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

In addition, during the years at issue, Tax Law § 688(former [c]) stated:

Income tax refund within forty-five days of claim for overpayment.--If any overpayment of tax imposed by this article is credited or refunded within forty-five days after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within forty-five days after such return was filed, whichever is later, or within forty-five days after an amended return was filed claiming such overpayment or within forty-five days after a claim for credit or refund was filed on which such overpayment was claimed, or within six months after a demand is filed pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, no interest shall be allowed under this section on any such overpayment. For purposes of this subsection, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year shall be considered as filed on such last day.

The Legislature amended the above provisions of the Tax Law, beginning January 1, 1999, in Chapter 377 of the Laws of 1999 by deleting all references to “amended returns” and “claims for credit or refund” in Tax Law § 688(a)(3). Accordingly, Tax Law § 688(a)(3), which remains in force, provides as follows:

Late returns. Notwithstanding the provisions of paragraph one or two of this subsection, in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

In addition, Tax Law § 688(c) was also amended by chapter 377 of the Laws of 1999 to read as follows:

Income tax refund within forty-five days of claim for overpayment.--If any overpayment of tax imposed by this article is credited or refunded within forty-five days after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within forty-five days after such return was filed, whichever is later, or within six months after a demand is filed pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, no interest shall be allowed under this section on any such overpayment. In regard to an amended return claiming such overpayment or a claim for credit or refund on which such overpayment was claimed, if such overpayment is refunded within forty-five days of filing such return or such claim, no interest shall be allowed from the date such return or such claim is filed until the day the refund is made. For purposes of this subsection, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year shall be considered as filed on such last day.

The Memorandum in Support, New York State Senate, for chapter 377 of the Laws of 1999, stated its purpose as follows: “This bill provides that the state shall pay any interest earned on a tax overpayment from the date an original tax return was filed, rather than the date the same tax return was amended.”

The Memorandum in Support set forth the following as the justification for chapter 377:

Currently, the tax law provides that no interest shall be paid on any tax

overpayment for any date before a late or amended tax return is filed. An amended tax return is not the same as a tax return filed late and this difference should be realized in regard to the payment of interest on any tax overpayment. Responsible taxpayers filing on time, but for whatever reason need to amend their original tax return, should not be deprived of the interest earned on their overpayment from the date the original tax return was filed to the date it was amended. This legislation, if enacted, would change the current law by authorizing the payment of all interest accrued on a tax overpayment from the date the original tax return was filed, and in so doing, give taxpayers filing an amended return the full benefit of all the interest earned on their tax overpayment.

The Division's own Technical Services Bureau Memorandum, TSB-M-99(7)I, issued November 19, 1999, explained these amendments as follows:

For tax years beginning on or after January 1, 1999, section 688(a)(3) of the Tax Law is amended relating to the payment of interest on an overpayment of personal income tax as a result of the filing of an amended return or a claim for credit or refund. Under the new law, interest on an overpayment of tax claimed on an amended return or a claim for credit or refund will be payable from the due date of the original return to the date the refund is issued. However, section 688(c) of the Tax Law is also amended to provide that if the Department refunds the overpayment within forty-five days after the amended return or a claim for credit or refund is filed, no additional interest will be paid from the date the amended return or a claim for credit or refund is filed until the date the refund is issued.

It is clear that, if the taxable years at issue were not years prior to 1999, petitioners would be entitled to the relief sought, and interest would be due and payable on the overpayments made by the trusts from the due date of the original returns filed. However, the amendments made to the Tax Law by chapter 377 of the Laws of 1999 were made only prospectively, i.e., for tax years beginning January 1, 1999. There is no ambiguity with respect to the effective date of the amendments made to Tax Law § 688(a)(3) and (c).

For tax years beginning prior to January 1, 1999, Tax Law § 688(a)(former [3]) provided that, in the case of an overpayment claimed on an amended return or on a claim for credit or refund which is filed after the last date prescribed for filing the return for the years at issue (petitioners filed amended returns on or about July 17, 2006 for the years 1995, 1996 and 1997, a

date that was within 90 days of the final determination of the federal change as required by Tax Law § 659), no interest would be allowed or paid for any day before the date on which the return or claim was filed.

Petitioners raise the argument that Tax Law § 687(c) states that interest is payable for Federal Changes when filed within the 90-day period of the report. Therefore, petitioners contend that since they filed within the 90-day period, they are entitled to interest from the due date of the original return.

Tax Law § 687(c) provides, in relevant part, that:

If the report or amended return required by section six hundred fifty-nine [this section requires that a taxpayer report a federal change to the Division within 90 days of the final determination of such federal change] is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal change or correction.

Tax Law § 687(c) is only relevant insofar as it provides the requisite authority to pay interest to taxpayers from the date of reporting a federal change to the Division through either a report or amended return. We note that the statute places limitations on this authority such that failure to report within 90 days of a federal change results in no interest being payable on the claim, credit or refund of the overpayment. Tax Law § 687(c) makes no reference to the date from which interest is payable. Accordingly, we reject petitioners' argument that Tax Law § 687(c) requires a ruling in their favor.

We also reject petitioners' equity arguments to grant interest from the due date of the original return. In essence, petitioners ask that we disregard the applicable statute for the period at issue, *to wit*, Tax Law § 688(a)(former [3]), and grant them interest from the filing of the original return, as provided in the current Tax Law § 688(a)(3). Petitioners assert that the failure

of the Division to refund interest from the date of filing of the original returns (while requiring the trust beneficiaries to pay interest on their additional taxable income resulting from the federal changes from the date of filing of the original returns for the years at issue) is inequitable or unjust. The Legislature agreed with petitioners and amended the relevant sections of the Tax Law to correct this inequity, but only prospectively. However, this Tribunal cannot grant the requested relief.

The Tax Appeals Tribunal is an adjudicative body with limited jurisdiction and power granted by statute (*see generally* Tax Law § 2000). Unlike the Article III courts or small claims proceedings where “a just and equitable determination is authorized” (*see* Tax Law § 2012), this Tribunal lacks equity jurisdiction (*see* Tax Law § 2010). Further, the rules of statutory construction forbid retroactive application of amendments to a statute unless the language of the statute clearly indicates that the amendment should be applied retroactively. In the present matter, section 3 of chapter 377 of the Laws of 1999, which amended Tax Law § 688(a)(3) and (c), states: “This act shall take effect immediately and shall apply to taxable years beginning January 1, 1999.” Accordingly, we find that the Division properly denied petitioners’ claims for refund of interest from the dates of filing their respective original 1995, 1996 and 1997 returns because Tax Law § 688(former [3]) and Tax Law § 688(former [c]) provide that interest is to be paid from filing the amended return reflecting the federal changes.

Petitioners again contend that the Division did not refund the proper amount of New York City tax paid. However, we find that the amended returns submitted into evidence in this proceeding do not indicate that any of the trusts paid New York City tax. The amended returns filed by petitioners in these matters did not claim a credit or refund of New York City taxes. Petitioners offered no additional evidence to show that they paid New York City tax and,

accordingly, there is no basis upon which refunds of New York City tax are due and owing.

Accordingly, we conclude that there are no grounds to grant petitioners' requested relief with respect to New York City taxes.⁴

Petitioners also attempt to claim a violation of the United States and New York State Constitutions without citing specific provisions that have been violated by the applicable Tax Law statutes. The essence of petitioners' constitutional argument is contained in the following statement from their brief below:

Whether it is a violation of U.S. Constitution, N.Y.S. Constitution and/or Civil Rights Acts of State of New York when the "department" assesses a taxpayer from the original due date on "Federal Changes" while only allowing a taxpayer on the reciprocal "Federal Change" adjustment to receive interest from a date that the "Federal Changes" were filed and at a lower interest rate, at best (Petitioners' brief below, p. 5).

It is well settled that the Division of Tax Appeals lacks jurisdiction to consider claims alleging that a statute is unconstitutional on its face (*see Matter of A&A Serv. Sta.*, Tax Appeals Tribunal, October 15, 2009; *Matter of RAF Gen. Partnership*, Tax Appeals Tribunal, November 9, 1995) and at the administrative level, statutes are presumed to be constitutional (*see Matter of Lunding*, 218 AD2d 268 [1996], *revd* 89 NY2d 283 [1996], *cert granted* 520 US 1227 [1997], *revd* 522 US 287 [1998]).

As with the Division of Tax Appeals, the Tax Appeals Tribunal may determine whether tax law statutes are constitutional as applied (*Matter of Eisenstein*, Tax Appeals Tribunal, March 27, 2003, *citing Matter of David Hazan*, Tax Appeals Tribunal, April 21, 1988, *confirmed* 152 AD2d 765 [1989], *affd* 75 NY2d 989 [1990]). We note that, "[t]axing statutes, like other social

⁴ We note that the Administrative Law Judge properly determined that these claims related to overpayment of New York City taxes would be time-barred because Tax Law § 687(c) requires that these such claims be filed within two years from the notice of such change.

and economic legislation that neither classify on the basis of a suspect class nor impair a fundamental right, must be upheld if the challenged classification is rationally related to achievement of a legitimate State purpose” (*Trump v. Chu*, 65 NY2d 20, 25 [1985], *appeal dismissed* 474 US 915 [1985]). “The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it” (*Madden v. Kentucky*, 309 US 83, 88 [1940]).

We reject petitioners’ constitutional argument because they failed to adduce sufficient evidence supporting their theory of disparate treatment. Initially, we note that there is no indication that any statute at issue herein relates to a suspect class or fundamental right. Rather, petitioners assert disparate treatment because interest on overpayments, resulting in a refund, are calculated from the date of filing for the amended return, whereas trust beneficiaries who file an amended return showing underpayment of tax, and have taxes due, are required to pay interest calculated from the date of filing for the original return. While related, the taxpayers, i.e., the trusts with reduced interest income and the beneficiaries with increased interest income are not similarly situated. In fact, the statute that applies to the beneficiaries in these transactions is not the same statute. Because the federal changes resulted in overpayments by petitioners, Tax Law § 688 (interest on overpayment) applies, while Tax Law § 684 (interest on underpayment) is applicable where the federal changes resulted in underpayments by the trust beneficiaries. Further, petitioners have not raised any serious argument alleging that no rational basis or support exists for Tax Law § 688. Accordingly, we reject petitioners’ constitutional arguments because they lack merit.

We also reject petitioners’ equity argument based upon the difference in the rate of interest charged to taxpayers who have underpaid their taxes and the rate of interest paid to

taxpayers who are due refunds because of overpayments. Tax Law § 697(j) gives the Commissioner of Taxation and Finance the authority to set the overpayment and underpayment rates of interest to be paid pursuant to Tax Law §§ 684, 685 and 688. Specifically, Tax Law § 697(j)(2)(A) and (former [B]), in effect at the time the amended returns were filed, provided that the overpayment rate was the sum of the federal short term rate plus two percentage points while the underpayment rate was the sum of the federal short term rate plus four percentage points. Therefore, there is statutory authority for the disparity in the overpayment and underpayment interest, and because the Tax Law grants to the Commissioner of Taxation and Finance the exclusive authority to set these interest rates, the Tax Appeals Tribunal lacks the authority to reverse or reset these rates.

We have considered petitioners' remaining arguments and find them properly rejected by the Administrative Law Judge. Petitioners failed to present any persuasive argument that would prove that the determination was erroneous in any way.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Michael A. Goldstein A No. 1 Trust, Michael A. Goldstein "I" No. 2 Trust, and Michael A. Goldstein - Boris Goldstein No. 3 Trust is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petitions of Michael A. Goldstein A No. 1 Trust, Michael A. Goldstein "I" No. 2 Trust and Michael A. Goldstein - Boris Goldstein No. 3 Trust are denied;

4. The Notices of Disallowance, dated December 15, 2006 and July 16, 2008, are sustained.

DATED:Troy, New York
June 29, 2011

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner