

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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|--|---|----------------|
| In the Matter of the Petition | : | |
| of | : | |
| KATHLEEN DUNN | : | DECISION |
| | : | DTA NO. 822970 |
| for Redetermination of a Deficiency or for Refund | : | |
| of New York State and City Personal Income Tax | : | |
| under Article 22 of the Tax Law and the Administrative | : | |
| Code of the City of New York for the Year 2004. | : | |

Petitioner, Kathleen Dunn, filed an exception to the determination of the Administrative Law Judge issued on May 13, 2010. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel).

Petitioner did not file a brief in support. The Division of Taxation did not file a brief in opposition. Petitioner's request for oral argument was denied.

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

ISSUE

Whether petitioner is liable for the payment of interest.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for findings of fact "5" and "6," which have been modified. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

Petitioner, Kathleen Dunn, timely filed her 2004 New York State personal income tax return, form IT-201, claiming a refund of \$184.17. Petitioner claimed, as part of her itemized deductions, a tax deduction in the amount of \$8,768.91 on line 2 of the attached Itemized Deduction and Other Taxes and Tax Credits, form IT-201-ATT.

On May 20, 2005, the New York State Department of Taxation and Finance issued to petitioner a refund check in the amount of \$184.17.

On February 1, 2008, the Division of Taxation (Division) issued to petitioner a Statement of Proposed Audit Changes indicating additional tax due of \$164.00, plus interest. The statement provided the following explanation:

Based on an exchange of information agreement between New York State and the Internal Revenue Service, we have received from the IRS, the amounts shown on your 2004 federal tax return. The adjustments listed below are differences we found when we compared the federal information with your 2004 New York return

To compute the correct amount of New York itemized deductions shown on line 34 of the 2004 New York return, Form IT-201 and on line 16 of Form IT-201-ATT, Itemized Deduction and Other Credits and Taxes, you must subtract the amount of state and local income taxes you claimed on line 5 of your federal Schedule A from the total federal itemized deductions shown on line 8 of your New York State Form IT-201-ATT.

Since the amount of state and local taxes reported on line 9 of Form IT-201-ATT does not equal the amount shown on line 5 of federal Schedule A, we adjusted for the difference.

Due to the time required to obtain and process the federal information, we could not issue the Statement of Audit Changes before this date.

* * *

Interest is required by section 684(a) of the New York Tax Law.

The statement indicated an adjustment to New York taxable income of \$2,230.00.

Petitioner's federal Schedule A - Itemized Deductions for the year 2004 indicated on line 5 state and local income taxes paid of \$2,230.67.

We have modified finding of fact "5" of the Administrative Law Judge's determination to read as follows:

On March 27, 2008, the Division issued to petitioner a Notice of Deficiency for the unpaid balance of the interest in the amount of \$43.95.¹

We have modified finding of fact "6" of the Administrative Law Judge's determination to read as follows:

Subsequent to the issuance of the Statement of Proposed Audit Changes, on February 5, 2008, petitioner paid to the Division, the tax amount asserted to be due in the amount of \$164.00.²

OPINION

Tax Law § 684 provides as follows:

[I]f any amount of income tax is not paid on or before the last date prescribed in this article for payment [in this case April 15, 2005], interest on such amount . . . shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted.

Tax Law § 3008(a) provides for the abatement of interest attributable to certain unreasonable errors or delays by the Division. The application of the statute is limited to unreasonable errors or delays by Division employees in performing "ministerial or managerial" acts, and only if no significant aspect of the unreasonable error or delay can be attributed to the taxpayer involved (Tax Law § 3008[a][2]).

Petitioner failed to carry the burden of proving such error. Petitioner has neither alleged nor adduced any unreasonable errors or delays by the Division. Moreover, a review of the record

¹ We have modified finding of fact "5" to more accurately reflect the record.

² We have modified finding of fact "6" to more accurately reflect the record.

indicates that petitioner admitted to an error in computing her taxes for the period at issue, which would disqualify the abatement of penalties pursuant to Tax Law § 3008(a).

The balance of petitioner's arguments are rendered moot.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Kathleen Dunn is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Kathleen Dunn is denied; and
4. The Notice of Determination dated March 27, 2008 is sustained.

DATED: Troy, New York
February 24, 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