

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
MARILYN J. BELLOWS : DETERMINATION
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 a 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).

A hearing was held before Jean Corigliano, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on September 11, 1989 at 2:45 P.M. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq., (Andrew Zalewski, Esq., of counsel).

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

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's 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

¹Petitioner 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

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.

CONCLUSIONS OF LAW

A. For the year in issue, Tax Law § 651(b)(former [4]) provided that where a husband and wife filed separate returns on a single form, "an overpayment [of tax] by a spouse and interest thereon shall be credited against past-due support...owed by the other spouse, of which the tax commission has been notified pursuant to [Tax Law § 171-c]" (Tax Law § 651[b][former (4)(B)]). The same statute contained a proviso enabling one spouse to avoid liability for another spouses's debt by including with his or her return a demand that the overpayment attributable to the spouse not be credited against past-due support owed by the other spouse. The Rules and Regulations of the State Tax Commission further provided: "A spouse may not file an amended New York State personal income tax return to make such a demand" (20 NYCRR 145.10[f]).

B. Petitioner argues that it is blatantly unfair to hold her liable for her spouse's debt when she did not know of its existence before filing her 1985 return, and therefore she did not have the opportunity to demand that her overpayment not be applied to his debt. While her position is understandable, there is no provision in the Tax Law which would allow the waiver of the statutory requirement of section 651(b)(former [4]).

C. The petition of Marilyn J. Bellows is denied.

DATED: Troy, New York
December 14, 1989

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE

overpayment of tax amounted to \$241.76.