

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
JOHN P. AND ELEANOR FORD	:	DETERMINATION
	:	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.	:	

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Petitioners, John P. and Eleanor Ford, 786 Webster Avenue, New Rochelle, New York 10804, filed a petition 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.

On July 10, 1992 and July 13, 1992, respectively, petitioners and the Division of Taxation by William F. Collins, Esq. (Lawrence A. Newman, Esq., of counsel) consented to have the instant controversy determined on submission without hearing. Documentary evidence was submitted by the Division of Taxation on July 22, 1992. The parties had until September 28, 1992 to submit additional evidence. After review of the entire record, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

ISSUE

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

FINDINGS OF FACT

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.

#### SUMMARY OF PETITIONERS' POSITION

Petitioners do not challenge the amount of tax which is asserted to be due. However,

petitioners do not feel that they should be charged any interest because the Department of Taxation and Finance failed to contact petitioners for eight years concerning their failure to file a personal income tax return for the year 1980. Petitioners submit that because of the Department's inattention to their particular situation, the amount of interest due has accumulated unjustly.

CONCLUSIONS OF LAW

A. Tax Law § 684(a) provides for the imposition of interest on any amount of income tax not paid from the last date prescribed for payment to the date paid. The interest herein was therefore properly imposed. There is no provision in Article 22 of the Tax Law for the suspension, waiver or abatement of interest properly imposed pursuant to Tax Law § 684(a). Petitioners' claim is patently untenable. It is also noted that the interest continued to accumulate because petitioners failed to file a New York State income tax return for the year 1980 as required by Tax Law § 651 and to pay the tax due thereon. Petitioners cannot avoid their responsibility to file a return and pay the tax due by shifting such responsibility onto the Department.

B. The petition of John P. and Eleanor Ford is denied and the Notice of Deficiency, dated January 13, 1989, is sustained.

DATED: Troy, New York  
April 1, 1993

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE