STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOEL M. AND MERCEDES LEVIN	:	DETERMINATION DTA NO. 814230
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the New York City Administrative Code for the Year 1985.	:	

Petitioners, Joel M. Levin, c/o Joseloff, 15 Bath Crescent Road, Bloomfield, Connecticut 06002, and Mercedes Bograd Levin[1], 1000 Park Avenue, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the year 1985.

A hearing was held before Roberta Moseley Nero, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on July 24, 1996 at 1:15 P.M., with all briefs to be submitted by October 22, 1996, which date began the six-month period for the issuance of this determination. Petitioner Joel M. Levin appeared pro se and on behalf of his former wife, Mercedes Bograd Levin (see, Finding of Fact "1"). The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUES

I. Whether petitioners filed a New York resident income tax return for 1985.

[1]The caption in this matter refers to Mercedes Levin based upon the notice of deficiency at issue. However, in documents submitted to the Division of Tax Appeals, Ms. Levin refers to herself as Mercedes Bograd Levin.

II. If it is found that petitioners did file a New York resident tax return for 1985, whether the notice of deficiency was issued outside the applicable statute of limitations, or whether any taxes owed for 1985 were, or should have been, discharged in bankruptcy.[2]

III. If it is found that petitioners did not file a New York personal income tax return for 1985, whether petitioner Mercedes Bograd Levin is entitled to relief under the "innocent spouse" provisions of Tax Law § 651(a)(5).

FINDINGS OF FACT

1. A petitioner's spouse may represent a petitioner before the Division of Tax Appeals and this is considered a personal appearance by the absent spouse (20 NYCRR 3000.2[a][1]). Petitioners in this matter were divorced sometime between September 14, 1992 (the date of Mr. Levin's voluntary petition for bankruptcy wherein he listed his marital status as married living apart) and January 19, 1994 (the date of separate letters from the Division of Taxation to each of the petitioners explaining that even though divorced they remained jointly and severally liable for any joint return filed before their divorce). In August of 1995 the Division of Tax Appeals received the petition in this matter which was signed by Mr. Levin only. It appears that Mr. Levin is appearing on behalf of himself and his former wife.[3] While not addressed in the the Tax Appeals Rules of Practice and Procedure, it is consistent to allow Mr. Levin to appear on behalf of himself and his former spouse since the Notice of Deficiency at issue in this matter was issued to both petitioners for a liability arising from 1985 when petitioners, although living apart, were still married and filed a joint Federal tax return.

2. On or about October 7, 1986, petitioners filed their 1985 Federal income tax return. (The return is dated October 7, 1986 and there is attached to the return an approved request for an extension of time to file the return until October 15, 1986.) The return shows $81,543.00 as

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[2]Petitioners conceded at hearing that if it is found that they did not file a New York State personal income tax return for 1985, the notice of deficiency was timely and the debt is not one that would have been discharged in bankruptcy (see, Tax Law § 683[c][1][A]; 11 USC § 523[a][1][B]).

[3]If it is found that Mr. Levin is not appearing on behalf of his former wife, Ms. Levin will be deemed to not have appeared since she did not sign the petition.

the amount petitioners owed after deducting $28.00 for withholding and a $32,000.00 estimated tax payment.

Petitioners submitted a copy of their New York personal income tax return for 1985 at the hearing held in this matter. Attached to the return is a copy of an extension request for time to file the return, but unlike the Federal income tax return there is no evidence of a response from the Division. The return is also dated October 7, 1986. Petitioners assert that this return was mailed in 1986. The Division asserts it has no record of receiving the return. The introduction of the return at the hearing was the first time the Division had seen a copy of the return. The filing

status was listed as married filing separately on one return and lists the amount owed as $32,137.00 for Column A and $14,633.00 for Column B. This was after deducting an estimated tax payment of $18,000.00 from Column B. Mr. Levin admits that no payments were submitted with either the Federal or New York State personal income tax returns even though there was a balance due for Federal tax of $81,543.00, and a balance due for State tax of $46,770.00. He testified that no payments were submitted with the returns because he did not have the money to pay them.

A certified check for $98,264.84 was issued to the Internal Revenue Service on June 10, 1987 in satisfaction of the remainder petitioners owed for 1985. Mr. Levin admitted on cross-examination that he had not initiated any contact with the Division to pay the $46,770.00 tax liability listed on the copy of the New York State personal income tax return for 1985 submitted at the hearing.

Mr. Levin stated at the hearing both that he had filed his Federal and State returns and that he believed he had filed his State return. He testified that he would file his Federal and State returns together. On cross-examination Mr. Levin testified that he mailed the returns from some post office in Manhattan and that he thought he had mailed them certified but that he did not have any certified receipts. When asked by the Division's representative whether he had

mailed them certified or certified return receipt requested, Mr. Levin replied that he did not know because some years he mailed the returns one way and other years the other way.

3. By letter dated November 16, 1988 and addressed to both petitioners, the Division of Taxation's (hereinafter "Division") Central Office Audit Bureau informed petitioners that it had obtained information pursuant to IRC § 6103(d) that petitioners had filed a Federal income tax return for 1985 listing an address within New York State, but that the Division had been unable to locate a State return. The letter asked certain questions regarding whether petitioners had filed a 1985 New York State income tax return and informed petitioners that failure to reply to the letter would result in an estimated assessment being issued based upon the information in the Division's file.

4. The Division issued a Statement of Audit Changes, dated July 24, 1989 and addressed to both petitioners, showing a 1985 amount of New York State tax due of $29,159.14, exclusive of interest or penalties, and a 1985 amount of New York City tax due of $9,151.20, exclusive of interest or penalties. The statement explained that since petitioners had not responded to the Division's previous letter, their tax was computed using the information obtained from the Internal Revenue Service pursuant to IRC § 6103(d). The statement further explained that a late filing penalty had been imposed together with a negligence penalty. It also explained that an amount equal to 50% of the interest due had been imposed since petitioners' deficiency was due to negligence or intentional disregard of the Tax Law. There is no indication on the statement as submitted into evidence as to which bureau or unit within the Division prepared the statement.

5. Mr. Levin responded with a letter dated August 10, 1989, addressed to the Division's Tax Compliance Division, in which he explained that a payment of $18,000.00 had been made for the 1985 tax liability by check dated January 10, 1986, and he attached a copy of the cancelled check. With regard to whether petitioners had filed a 1985 return the letter stated:

> "I had felt I subsequently filed a completed return but have not yet been able to locate such - (I recently lost my job and my employer threw all my records and files recklessly into various boxes.)"

Mr. Levin requested time to "reconstruct" the relevant records and asked if the Division would recompute the tax due with the $18,000.00 payment, and requested that penalty be abated since there had been no negligence on their part.

This letter was submitted into evidence by the Division and was the original letter sent to the Division by Mr. Levin. The representative of the Division explained that, when he received this particular letter, attached to it was a copy of a computer printout which was submitted by the Division as part of the same exhibit. The computer printout is dated February 18, 1989 and was apparently either printed by, or requested by, the Division's Estimated Tax Processing & Revenue Management Division. It shows that the $18,000.00 payment was received by the Division on January 16, 1986. While not explained by the Division at the hearing, this document shows this payment as being applied to the 1984 return of petitioners, not the 1985 return at issue.

6. On September 14, 1992 Mr. Levin signed a Voluntary Petition, which was submitted to the United States Bankruptcy Court, Southern District of New York.

7. On April 7, 1993 the Division's Revenue Opportunity Division sent a letter to Mr. Levin regarding returns for 1987, 1989 and 1990 (i.e., not the year at issue in these proceedings). The letter stated that it had become necessary to initiate formal assessment procedures since petitioners had not responded to earlier correspondence concerning the filing of New York State income tax returns. It also states that the liability would be estimated at $1,900.00 per year for each of the three years. The total estimated assessment was for $5,700.00.

8. On June 23, 1993 the Division sent Mr. Levin a Consolidated Statement of Tax Liabilities. Listed as liabilities finally determined to be due were assessments #L-000347229 (showing a zero balance due) and #L-007493533 details of which were set forth in an attached Notice and Demand. The Notice and Demand, dated June 23, 1993 and also addressed to Mr. Levin, was for assessment #L-007493533 in the amount of $5,700.00. Listed as currently under review was assessment #L-001131077, the assessment at issue in these proceedings. Under the

caption "Tax Amount Assessed" was listed $38,272.47, which did not reflect petitioners' $18,000.00 payment.

Included with this mailing was an unsigned letter from the Division's Revenue Opportunity Division stating:

> "The accompanying Notice is only to advise you of the determination by the Department of Taxation and Finance of the tax(es) asserted due for the period(s) indicated thereon. The Notice is the equivalent of a Federal notice of tax deficiency and does not create a lien on the property of the estate. Under the New York State Tax Law, the amount(s) of tax asserted due may be challenged through a hearing process and would ordinarily be final unless an application for a hearing was filed with the Department of Taxation and Finance within 90 days from the date of the notice, or unless the Commissioner of Taxation and Finance redetermined the tax(es). But notwithstanding provisions of the State Tax Law, no liability for the tax(es) may become finally and irrevocably fixed unless and until allowed. This is pursuant to the Bankruptcy code, which stays and supersedes operation of the State Tax Law. No demand for payment is made for the tax(es) listed in the accompanying notice. The Debtor should ignore any demand or statement on the Notice which is inconsistent with this statement."

The accompanying notice referred to in the letter was the Notice and Demand for assessment #L-007493533 in the amount of $5,700.00, not the notice at issue in these proceedings. Assessment #L-007493533 was the only notice specifically set forth in the heading of the letter, and the letter did not refer to the Consolidated Statement Statement of Tax Liabilities.

9. On November 2, 1993 the United States Bankruptcy Court, Southern District of New York, issued a Discharge of Debtor releasing Mr. Levin from all dischargeable debts.

10. On December 9, 1993, the Division's Audit Division - Central Office issued to Mr. Levin a Notice of Assessment Resolution specifically informing him that the $18,000.00 payment had been applied to assessment #L-001131077, the notice at issue in these proceedings. Also issued on this date was a Consolidated Statement of Tax Liabilities listing a new amount of tax due for this assessment of $20,272.47, and assessment #L-007493533 with no tax due, but a penalty due of $5,700.00.

11. On January 4, 1994 Mr. Levin wrote to the Division's Bankruptcy Special Processing Unit attaching a copy of the November 2, 1993 Discharge of Debtor of the United States Bankruptcy Court. The letter expressed his opinion that petitioners were released from all dischargeable debts including assessment #L-001131077 in the amount of $51,579.29.

12. On January 10, 1994, the Division's Audit Division - Central Office issued to both petitioners a Notice of Deficiency (assessment #L-001131077) showing tax due for 1985, exclusive of penalties and interest, of $17,121.27 and $3,151.20 (presumably for New York State and New York City respectively). This equals the tax due of $20,272.47 set forth in the December notices and therefore continued to reflect a crediting of petitioners' previous $18,000.00 payment.

13. On February 2, 1994 the Division's Tax Compliance Division responded to Mr. Levin's January 4, 1994 letter (explaining that he had received a discharge in bankruptcy) by informing him assessment #L-007493533 had been discharged pursuant to the Bankruptcy Code. The letter did not mention the notice at issue in this proceeding.

14. On July 19, 1994, the Division's Audit Division - Income Tax Desk Audit sent a letter to petitioners (separate letters at their respective addresses) explaining that petitioners' file and request for conciliation conference had been reviewed and the Division believed its notice to be correct. It went on to state that the Division had no record of the 1985 return being filed, and that therefore, tax may be assessed at any time because there is no statue of limitations for nonfiling. The letter explained that each petitioner was jointly and severally liable for joint returns filed prior to their divorce. Finally, it stated that petitioners could withdraw their request for conciliation conference upon payment of $53,696.84 within 20 days.

15. A Conciliation Order was issued in this matter on June 2, 1995, and on August 28, 1995 a petition contesting that order was received by the Division of Tax Appeals.

16. Ms. Levin submitted an affidavit in support of petitioners' position that she is entitled to relief under the "innocent spouse" provisions of the Tax Law, which was received by the Division of Tax Appeals on August 30, 1996.[4] Ms. Levin explains that she did not live with Mr. Levin during 1985, nor was she informed on any of his financial affairs. She stated that

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[4]Petitioners were allowed until the due date of their brief to submit an affidavit from Ms. Levin in support of petitioners' position that Ms. Levin is entitled to relief under the "innocent spouse" provisions of the Tax Law. The Division objected at the hearing to petitioners being allowed the time to file this affidavit. It was determined that the Division could continue its argument on its objection in writing after having seen the affidavit. While the Division responded substantively to the contents of the affidavit in its post hearing brief, it did not raise the objection to allowing the affidavit in its brief. Therefore, the Division's objection is deemed abandoned.

with regard to the 1985 returns Mr. Levin assured her that there were no problems because he had proof that he had paid the taxes in the form of a cancelled check. Ms. Levin also attached a copy of page 15 of what is allegedly the divorce settlement between the parties wherein Mr. Levin agrees to be responsible for all taxes that are not due through any fault of Ms. Levin. Ms. Levin concludes by stating: "I feel that I should not penalized for a situation over which I had no knowledge or control and from which I did not benefit."

SUMMARY OF THE PARTIES' POSITIONS

17. Petitioners contend that they filed a 1985 New York personal income tax return. In support of their contention is the testimony of Mr. Levin together with Mr. Levin's correspondence with the Division. Petitioners assert that the fact that it took the Division from 1986 to December of 1993 to credit petitioners with their $18,000.00 estimated tax payment is evidence that supports the conclusion that the Division also misplaced their return.

Petitioners argue that in the event it is found that a return was not filed, Ms. Levin should be entitled to "innocent spouse" relief because the parties lived apart at the time the return was due, and Ms. Levin had no knowledge of, nor benefited from, the failure to file the return.

18. The Division argues that without proof of certified mailing of the return petitioners have only Mr. Levin's testimony as evidence of the mailing of the return and such testimony is legally insufficient to establish mailing. With regard to the amount of time it took the Division to credit petitioners for their 1986 estimated tax payment the Division asserts that petitioners' argument is merely a "smoke screen" and the length of time is probably best explained by the fact that petitioners had not filed a return.

In response to the argument that Ms. Levin should be entitled to "innocent spouse" relief if it is found petitioners did not file a return, the Division argues that such relief by statute is available only in a situation where a return has been filed.

CONCLUSIONS OF LAW

A. Petitioners were required to file a 1985 New York State personal income tax return (see, Tax Law former § 651[a]). Throughout these proceedings petitioners have maintained that

a 1985 New York personal income tax return was filed, having been mailed by regular or certified mail. However, petitioners produced no evidence of certified mailing of the return. Petitioners' direct evidence on the issue of the mailing of the return consists entirely of statements made by Mr. Levin in correspondence with the Division, and his testimony at the hearing.[5]

The testimony of Mr. Levin is legally insufficient, without proof of certified mailing, to prove that petitioners' 1985 New York State personal income tax return was filed (Matter of Schumacher, Tax Appeals Tribunal, February 9, 1995, Matter of Savadjian, Tax Appeals Tribunal, December 28, 1990).

B. Petitioners argue that from the facts of this case, in particular the almost eight years it took for the Division to credit the $18,000.00 estimated tax payment to petitioners' 1985 liability, it can be inferred that petitioners mailed their 1985 return and the Division simply misplaced it. The Division asserts that petitioners' argument regarding the length of time it took for the Division to credit their estimated tax payment was a "smoke screen", and that in all probability the trouble with crediting the payment was a result of petitioners' failing to file a return. I do not agree with the Division that petitioners' argument is merely a "smoke screen". Petitioners are arguing from a common sense standpoint that the circumstantial evidence they presented was sufficient to infer that they filed a return and the Division simply misplaced it. From a legal standpoint petitioners are arguing that they have presented sufficient evidence of mailing to shift the burden to the Division to prove that it did not receive the return.

In support of petitioners' assertion are the following facts: 1) petitioners filed a Federal return for 1985; 2) it took the Division from January of 1986 until December of 1993 to apply petitioners' $18,000.00 tax payment to their 1985 tax liability; 3) there were at least six different divisions or offices of the Division involved in this matter; 4) the Division knew by February of 1989 that a payment in the amount of $18,000.00 had been made by petitioners, but

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[5]It should be noted that Mr. Levin's statements on the issue of the filing of a return, whether written or given during testimony at the hearing, are inconsistent. At times he claimed he filed the return, and other times he claims he believed he filed the return. These conflicting statements weaken petitioners' contention that a return was filed.

apparently mistakenly applied the payment to 1984 instead of 1985; 5) there were liabilities for other tax years included in much of the correspondence between petitioners and the Division; 6) petitioners were divorced during the course of these proceedings; and 7) Mr. Levin went through bankruptcy during the course of these proceedings. The difficulty with petitioners' argument is that even assuming these facts infer that the Division lost petitioners' return, such an inference would be relevant to the issue of whether the Division received the return. We do not reach the issue of whether the Division received the return unless petitioners first show that they mailed the return.

In Matter of Mutual Life Ins. Co. v. New York State Tax Commn. (142 AD2d 41, 534 NYS2d 565), the Appellate Division, Third Department found that where a petitioner presented compelling evidence that a check for payment of taxes had been prepared and mailed, the Division was required to submit some evidence of the procedures employed by the office that received and processed such checks, or that a search of the files had been made for the check to no avail. (This case concerned withholding tax, the check for payment of taxes being equivalent to the return in the instant case.) The petitioner in Mutual Life presented detailed evidence concerning the office processing of such checks, a carbon copy of the check itself and affidavits of office personnel involved in the processing of such checks. The Court also pointed out that petitioner's office procedures had produced an excellent withholding tax compliance record. The facts in the present case clearly do not exhibit such compelling evidence. Petitioners presented no evidence of their general practice of mailing returns other than testimony that they would have mailed their Federal and State returns at the same time and post office, and sometimes they would be sent by certified mail and sometimes by certified mail, return receipt requested. Petitioners produced a copy of the 1985 New York personal income tax return, but it was the first time that the Division had seen the return, and again there was no evidence of petitioners' mailing practices or particular evidence that such practices were followed with regard to mailing the 1985 return. Petitioners have produced no evidence of a past compliance record. Finally, the Division in this case, unlike Mutual Life, submitted several

documents stating that a search of the Division's records had been made and a return could not be located.

The Tax Appeals Tribunal ("Tribunal") has also dealt with similar arguments on several occasions. In Matter of Savadjian (supra), the petitioner testified as to when his return had been prepared, when his return had been mailed and that the return had been sent by regular mail. The return had shown a refund due and petitioner testified about numerous telephone calls he had made to the Division requesting his refund. It was not until after more than five years had passed that the Division informed the petitioner in writing that his refund was being denied because it had no record of his return being filed and it was too late to file a request for refund. The Division submitted a Certificate of Non-Filing indicating that a search had been made of the Division's records and no return for the year in question had been filed. The Tribunal discussed Mutual Life and held that petitioner's evidence, consisting almost entirely of his own testimony, did not rise to the level of proof presented by the petitioner in Mutual Life. The Tribunal stated that there was no evidence of office procedure or documentary evidence to support the mailing of the return. The Tribunal concluded:

> "Given the evidence of mailing offered by the petitioner, we find that the burden of producing evidence did not pass to the Division of Taxation. In other words, it was not necessary for the Division of Taxation to prove non-receipt since petitioner had not met his burden of proving timely mailing of his 1981 income tax return." (Matter of Savadjian, supra.)

The Tribunal went on to say that although there were some apparent inconsistencies between the information in the Certificate of Non-filing and the proof, it did not matter because it had already been concluded that the Division had no burden to prove nonreceipt because the petitioner had not established mailing first. The facts in Savadjian are very similar to the facts in the present case. The present petitioners' mailing evidence consists mostly of testimony, the documentary evidence mainly detailing the amount of time it took to credit petitioners with a previous $18,000.00 estimated tax payment. The petitioners in both cases spent several years attempting to get answers from the Division. I see nothing in petitioners' evidence that distinguishes this case from Savadjian. The fact that in this case the Division did not submit a

Certificate of Non-filing is immaterial because the Tribunal has held that if petitioners cannot prove mailing, the burden never shifts to the Division to establish nonreceipt. Also, in several pieces of correspondence from the Division to petitioners it is mentioned that the Division had undertaken a search of its files for the missing return. (See also, Matter of Reeves, Tax Appeals Tribunal, August 22, 1991; Matter of Schumacher, supra.)

Petitioners had the burden to prove that their return was filed (see, Tax Law § 689[e]). As explained above, having not proven that they mailed the return, the issue of whether the Division received the return does not arise. It is not an unreasonable inference under the facts of this case that the Division may have misplaced petitioners' return. However, even if that were assumed to be the case, petitioners first have to prove that they mailed it. The inference that the Division misplaced petitioners return relates to the issue of whether the Division received the return, not whether petitioners have proven they mailed it.

C. Having found that no return was filed, it must also be found that the Notice of Deficiency was timely issued by the Division and Mr. Levin's discharge in bankruptcy did not discharge his liability for New York State personal income taxes for 1985 (see, Tax Law § 683[c][1][A]; 11 USC § 523[a][1][B], footnote "2"). D. The remaining issue is whether Ms. Levin is entitled to relief under the so-called "innocent spouse" provisions of the Tax Law, in particular Tax Law former § 651(b)(5)[6], which provides:

> "Under regulations prescribed by the tax commission, if
>
> > "(A) a joint return has been made pursuant to subparagraph (A) of paragraph two or paragraph three of this subsection for a taxable year and on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,

[6]The statutory requirements of proving entitlement to "innocent spouse" relief are essentially the same in Tax Law former § 651(b)(5) and current Tax Law § 651(b)(5)(A). The changes in the statute relate to the changes made to other parts of Tax Law § 651; in particular the current law requires that a joint New York return with joint and several liability be filed if a joint Federal tax return was filed. In 1985 petitioners would have been allowed to file separately on one return, even though they filed a joint Federal return, thereby providing for separate liabilities. In the present case there was no return filed and the Division issued the Notice of Deficiency jointly, based on the Federal return which was filed jointly. Petitioners in this matter have not contested the reasonableness of the Division's assessment because it was issued jointly, nor for any other reason. The Notice of Deficiency is presumed to be correct when no evidence to the contrary is submitted. (See, Matter of Leogrande v. Tax Appeals Tribunal, 187 AD2d 768, 589 NYS2d 383; Matter of Tavolacci v. State Tax Commission, 77 AD2d 759, 431 NYS2d 174.)

> "the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement, then the other spouse shall be relieved of liability for tax (including interest, penalties and other amounts) for such taxable year to the extent that such liability is attributable to such substantial understatement." (Emphasis added.)

The "innocent spouse" provision is meant to protect a spouse where the other spouse has control over and access to the financial records and substantially understates income on a joint return. The "innocent spouse" in signing the return must not know or have reason to know of the underreporting. The first requirement to be met in obtaining relief under this section, is that there must have been a joint return filed. Since it has been found that no return was filed, Ms. Levin does not meet the requirements of Tax Law former § 651(b)(5) and is not entitled to any relief based upon this statutory provision. Furthermore, Ms. Levin's liability is not based upon substantial underreporting of income, but on failure to file any return. Failure to file a return is not protected by this provision.

Together with her affidavit in support of petitioners' position that Ms. Levin is entitled to "innocent spouse" treatment, Ms. Levin submitted what she describes as a page from petitioners' divorce settlement stating that Mr. Levin will be responsible for all joint tax liabilities, except those caused by Ms. Levin. The Division objects to this document because it is unreliable since it is one page out of a multipage document and it is impossible to tell if that document actually is petitioners' divorce settlement. I agree with the Division that the document is unreliable, and that, furthermore, even if the entire document were in evidence, it is an agreement between the parties and does not apply to or bind the Division. Ms. Levin's recourse, should she have to pay tax liabilities, is against Mr. Levin.

E. The petition of Joel M. and Mercedes Levin is denied, and the Notice of Deficiency dated January 10, 1994 is sustained.

DATED: Troy, New York
April 17, 1997

/s/ Roberta Moseley Nero
ADMINISTRATIVE LAW JUDGE