

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ROSS L. AND EVELYN SADDLEMIRE** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 816010  
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 Years 1992 and 1993. :

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Petitioners, Ross L. and Evelyn Saddlemire, 6 Bayview Avenue, Setauket, New York 11733, 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 Years 1992 and 1993.

On July 24, 1998 and August 24, 1998, respectively, petitioners appearing *pro se*, and the Division of Taxation, appearing by Terrence M. Boyle, Esq. (Justine Clarke Caplan, Esq., of counsel), consented to have the controversy determined on submission without a hearing with all briefs to be submitted by November 22, 1999, which date began the six-month period for the issuance of this determination.

Upon review of the documents and pleadings submitted in connection with this matter, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

***ISSUES***

I. Whether the Division of Taxation properly assessed petitioners penalties for late filing, late payment and failure to make estimated payments of tax pursuant to Tax Law § 685.

II. Whether reasonable cause exists such that penalties should be abated.

***FINDINGS OF FACT***

1. The Division of Taxation (“Division”) issued a Notice and Demand for Payment of Tax Due (Assessment ID No. L-008554484) dated March 14, 1994 to petitioners asserting personal income tax due for tax year 1992 in the amount of \$16,178.00<sup>1</sup> plus penalties and interest.

Payment concerning this notice, in the amount of \$16,191.00, was received from petitioners on or about January 25, 1994.

The Division issued a Notice and Demand for Payment of Tax Due (Assessment ID No. L-009884152-6) dated December 8, 1994 to petitioners asserting personal income tax due for tax year 1993 in the amount of \$29,802.00 plus penalties and interest of \$8,996.53 and \$1,383.49 respectively, for a balance due of \$40,182.02. Petitioners were afforded credit for the \$100.00 paid with the return as filed. Payment concerning this notice was received from petitioners on or about October 16, 1995.

Penalties were assessed against petitioners for both years for failure to timely file a return, failure to pay the tax shown due on the return, and failure to pay estimated tax pursuant to Tax Law § 685(a)(1), (2) and (c).

2. Petitioners filed Form IT-113-X, Claim for Credit or Refund of Personal Income Tax dated November 15, 1995, protesting their paid bills and seeking a credit or refund in the amount of \$19,520.78 for tax years 1992 and 1993. The reason provided for the claim was as follows:

- 1992 Return was audited. 88, 89, 90, 91 also audition [sic] but no penalty assessed
- 1993 Penalty excessive due to circumstances

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<sup>1</sup> The amount stated as due on the Notice and Demand differs slightly from the return as filed due to a Federal change not in issue in this matter.

The claim listed petitioners' mailing address as 10 Plantation Road, NE 101, Stuart, FL 34996, and noted that the address on petitioners' return was 150 Wilderness Rd., St. James, NY 11780.

3. The Division issued a Notice of Disallowance to petitioners for tax year 1992 and 1993 dated March 29, 1996. In pertinent part, the notice stated:

The provisions of the New York State Income Tax Law require us to provide you with this notice disallowing your claim for refund, in full, for the following reasons:

Penalty for late filing and payment was assessed because your returns were filed late with partial payment of the tax due.

Penalty for late filing, at 4 1/2% per month with a maximum of 22 1/2%, and penalty for late payment, at 1/2% per month with a maximum of 25% have been applied (sections 685[a][1] and [a][2] of the New York State Tax Law).

Since your prepayments (New York withholding and/or estimate tax payments) did not exceed 90% of the tax shown on the return, a penalty for underpayment of estimated tax has been imposed.

You have not established reasonable cause to abate the penalties.

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If you disagree and would like further review of this matter, you must file either a Request for Conciliation Conference with the Bureau of Conciliation and Mediation Services or a Petition for a Tax appeals Hearing with the Division of Tax Appeals *within two years from the date of this notice* (emphasis in original).

4. A conciliation conference was conducted on May 15, 1997, at which time the Refund Denial Notice dated March 29, 1996 was upheld by a Conciliation Order (CMS No. 156322) dated July 11, 1997.

5. Petitioners timely protested the Conciliation Order by filing a petition with the Division of Tax Appeals on July 31, 1997. Petitioners stated the following errors and asserted the following facts:

1992-Federal Return audited

Documents filed to extend deadline [sic] due to audit. Estimated state tax paid in timely manner based on original return. No penalty or assessment on Federal return final number which were [sic] finalized on mandated audit. All state numbers taken from Federal return.

1993-All required documents filed by accountant to extend Federal-State return deadline.

State did not have all documents filed relative to this case and year. Issue is for late filing. I have never filed late in my lifetime.

6. The Division's audit documents indicate that for tax year 1992, an extension request extended petitioners' filing date to August 15, 1993, but the return was not filed until December 15, 1993. Copies of petitioners' returns for 1992 and 1993 were submitted as part of the record. The 1992 was signed by the taxpayers and dated December 13, 1993. The return bears an in-date stamp by the Division of December 15, 1993. Attached to the return is a copy of Form IT-370, Application for Automatic Extension of Time to File for Individuals, which, if timely filed, extended a taxpayer's time to file until August 16, 1993. The form indicates a balance of tax due in the amount of \$16,191.00. According to both petitioners and the Division, this amount was paid by petitioners on January 25, 1994.

7. Concerning tax year 1993, no extension was filed according to the CARTS documents. The 1993 return was signed and dated October 3, 1994 by petitioners. It shows a balance of tax due in the amount of \$30,975.00, comprised of tax of \$29,902.00 and estimated tax penalty of \$1,073.00. The Division's in-date stamp indicates receipt of the return on November 1, 1994. A copy of an envelope addressed to the New York State Income Tax Bureau, and attached to the return, shows a postal cancellation date of October 29, 1994. Although payment of the tax was due April 15, 1994, according to the Division's records, the balance due was paid October 16, 1995.

8. Petitioners introduced two items of correspondence to the Internal Revenue Service, dated January 30, 1995 and March 31, 1995, respectively. Such correspondence is on the letterhead of petitioners' CPA and indicates that Forms 4868 and 2688, Application of Automatic Extension of Time to File US Individual Tax Return and Application for Additional Extension of Time to File US Individual Tax Return, respectively, were filed for tax year 1993 concerning petitioners' Form 1040. The two forms dated March 29, 1994 and August 10, 1994 requested an extension of time to file petitioners' Form 1040 until October 15, 1994.

***SUMMARY OF THE PARTIES' POSITIONS***

9. Petitioners argue that they did not have a tax liability for 1991 since a refund was issued, and thus there was no obligation to pay estimated taxes for tax year 1992, citing Tax Law § 685(d)(2). Petitioners claim that all New York State tax laws were complied with in the filing of both 1992 and 1993 income tax returns. Additionally, all proper forms, such as extension requests, were processed by petitioners' accountant. Petitioners request a refund of all penalties and interest assessed in connection with tax years 1992 and 1993.

10. The Division claims that petitioners failed to timely file income tax returns for tax years 1992 and 1993, failed to timely pay the liabilities and failed to make estimated payments as required by the Tax Law. Accordingly, the Division argues, petitioners have been properly assessed penalties for failure to timely file a return, failure to pay the tax shown due on the return and failure to pay estimated tax pursuant to the tax law. The Division argues that petitioners have misapplied Tax Law § 685(d)(2) since a tax liability did, in fact, exist for 1991. The Division maintains it is petitioner's burden to prove the Division's determinations are erroneous and that abatement of penalties and interest is appropriate.

***CONCLUSIONS OF LAW***

A. Tax Law § 651 states that every resident individual required to file a Federal income tax return for the taxable year must also file a New York State income tax return pursuant to Article 22, on or before the fifteenth day of the fourth month following the close of the taxable year, which in this and most individual cases is April 15. An automatic four-month extension of time to file such return may be requested by filing Form IT-370, Application for Automatic Extension of Time to File for Individuals (20 NYCRR 157.2[a][1][i]). The application must indicate the full amount of the applicant's properly estimated New York State personal income tax liability, and the application must be accompanied by a full remittance of the amounts due and unpaid as of the date the application is filed (20 NYCRR 157.2[a][4][i]). The application will not operate to extend the time for the payment of any New York State personal income tax (20 NYCRR 157.2[a][5]). As an alternative to filing Form IT-370, if individuals anticipate having no tax unpaid when they file their return, they can request an automatic four-month extension of time to file their return by filing Form 4868, Federal Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, with the Division on or before the date prescribed for the filing of their New York State personal income tax return (20 NYCRR 157.2[b]).

The Division also has the discretion to grant an additional extension of time for taxpayers to file their return, if taxpayers properly apply in writing on Form IT-372, Application for Additional Extension of Time to File for Individuals, or where an additional Federal extension has been granted, by filing a copy of the approved Federal extension (20 NYCRR 157.3[a]). No extension of time to file a New York State income tax return greater than six months is permitted (20 NYCRR 157.3[b]).

B. With respect to 1992, petitioners' New York State personal income tax return was due to be filed, with any liability paid, on or before April 15, 1993 (Tax Law § 651). In accordance with the provision of 20 NYCRR 157.2, petitioners filed Form IT-370 in order to obtain an extension of time to file until August 16, 1993. No further State extension was obtained (20 NYCRR 157.3[a]), and there is no proof that a Federal extension was filed with the State as permitted by 20 NYCRR 157.2(b) and 157.3(a). Petitioners filed their 1992 return on or about December 15, 1993, with a balance due of \$16,191.00. The liability was not paid until January 25, 1994. Unless petitioners can show that their failure to file and pay in a timely manner is due to reasonable cause and not willful neglect, penalties under Tax Law § 685(a)(1) and (2) are properly imposed.

C. The parameters of reasonable cause, for the years in issue, were defined by 20 NYCRR former 107.6. The relevant provision is set forth below:

(c)(1) Reasonable cause shall not be determined to exist as a basis for not imposing or for cancelling the additions to tax for failure to file a New York State income tax return or for failure to pay the amount of New York State income tax shown on such return, under, respectively, section 685(a)(1) and (2) of the Tax Law, where it is determined that the taxpayer or the taxpayer's duly authorized representative could have reasonably been expected to timely request extensions of time to file the New York State income tax return or extensions of time to pay the New York State income tax due, but failed to do so.

Although reasonable cause may be determined to exist with respect to additions to tax under certain circumstances (*see*, 20 NYCRR former 107.6[c][1][i], [ii]; [2]; [d], [e]) none of these regulatory provisions have been advanced or proven herein.

Petitioners argue that their representatives had power of attorney to act on their behalf for the filing of extensions and any other appropriate documents. However, petitioners and their representatives could clearly have been reasonably expected to timely request such extensions of

time to file, and failed to do so (20 NYCRR 107.6[c][1]). If petitioners had any reason to believe such extensions were not in fact filed, or filed improperly, by their representatives, they should have taken further steps in order to meet their obligation. Petitioners did not take such action. Accordingly, reasonable cause for abatement of additions to tax has not been established. There are no other assertions by petitioners of what constituted reasonable cause in this case, and petitioners clearly have not carried their burden (Tax Law § 689[e]). Thus, penalties pursuant to Tax Law § 685(a)(1) and (2) for tax year 1992 are upheld.

D. With respect to 1993, petitioners' New York State personal income tax return was due to be filed, with any liability paid, on or before April 15, 1994 (Tax Law § 651). Unlike 1992, petitioners did not file Form IT-370 in order to obtain an extension of time to file. Further, there is no proof that a Federal extension was filed with the State as permitted by 20 NYCRR 157.2(b) and 157.3(a). Petitioners filed their 1993 return on or about November 1, 1994, with a balance due of \$30,975.00. The liability was not paid until October 16, 1995. Unless petitioners can show that their failure to file and pay in a timely manner is due to reasonable cause and not willful neglect, penalties under Tax Law § 685(a)(1) and (2) are properly imposed.

As with 1992, petitioners have failed to submit any evidence to establish reasonable cause for the penalties imposed for the late filed and late paid tax return for 1993. Accordingly, the penalties and interest as assessed by the Division stand.

E. The final argument offered by petitioner is that the penalty pursuant to Tax Law § 685(c) should not be imposed by the Division for tax year 1992, since for tax year 1991, petitioners had no tax liability. Petitioners cite Tax Law § 685(d)(2) in support of their position.

A penalty is imposed under Tax Law § 685(c) for a taxpayer's failure to make proper estimated tax payments throughout the tax year. One of the exceptions to the imposition of the

penalty is Tax Law § 685(d)(2), where no penalty is imposed if in the preceding taxable year, there was no liability for tax under Article 22. Petitioners have misunderstood this provision. No liability for tax means a zero tax liability, not, as advanced by petitioners, a liability which resulted in a refund rather than a tax payment. Accordingly, Tax Law § 685(d)(2) does not provide an exception to petitioners' failure to make estimated tax payments in accordance with the Tax Law, and the penalty imposed by the Division pursuant to Tax Law § 685(c) for 1992 and 1993 is upheld.

F. The petition of Ross L. and Evelyn Saddlemire is denied, and the Notice of Disallowance dated March 29, 1996 is sustained.

DATED: Troy, New York  
April 13, 2000

/s/ Catherine M. Bennett  
ADMINISTRATIVE LAW JUDGE