

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>JAMES AND CONSTANCE GOODWIN</b>	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 816188
Personal Income Tax under Article 22 of the Tax Law for	:	
the Year 1980.	:	

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Petitioners, James and Constance Goodwin, 44 Chestnut Street, Garden City, New York 11530, 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 1980.

On August 31, 1998 and September 10, 1998, respectively, petitioners, appearing by Harvey H. Mendelsohn, CPA, and the Division of Taxation, appearing by Terrence M. Boyle, Esq. (Michael J. Glannon, Esq., of counsel) consented to have the controversy determined on submission without a hearing. All documentary evidence and briefs were due to be submitted by January 22, 1999, which date began the six-month period for the issuance of this determination. After due consideration of the record, Brian L. Friedman, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly denied petitioners' claim for refund of personal income tax for the year 1980.

***FINDINGS OF FACT***

1. The Division of Taxation (“Division”) was notified by the Internal Revenue Service (“IRS”) that a certain partnership, CSA CE 1977 Leasing Company (“the partnership”), had been subjected to Federal audit adjustments for the year 1980.<sup>1</sup> These Federal changes impacted the New York State personal income tax liability of James and Constance Goodwin (“petitioners”).

Since the Division had no record of petitioners having reported the Federal changes, it recomputed their 1980 personal income tax liability and, accordingly, on January 6, 1992, issued a Notice and Demand to petitioners for additional tax due of \$9,886.00, plus interest, for a total amount due of \$26,002.83 for the year 1980.

2. On June 5, 1995, the Division issued a Consolidated Statement of Tax Liabilities to petitioners which indicated that, with respect to their aforementioned liability for additional personal income tax for the year 1980, there remained a balance due of \$19,580.94. This amount included tax due of \$9,886.00, interest in the amount of \$21,885.48 and penalty of \$1,285.18.<sup>2</sup> Petitioners were credited with payments in the amount of \$13,475.72, leaving a balance due of \$19,580.94. By check dated June 23, 1995, petitioners paid the entire balance due of \$19,580.94.

3. On July 12, 1995, the Division received from petitioners a form IT-113-X, Claim for Credit or Refund of Personal Income Tax, on which they claimed a refund due of \$33,056.66, the total amount previously paid with respect to the tax year 1980 (*see*, Finding of Fact “2”). The basis for the claim for refund was petitioners’ contention that the increase in their income

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<sup>1</sup> There is no indication in the record as to the date on which the Division received this notification from the IRS.

<sup>2</sup> While the Consolidated Statement of Tax Liabilities does not state the reason for the imposition of penalty when it was not previously asserted, it must be presumed that the penalty was imposed pursuant to Tax Law § 685(a)(3) which provides for a penalty for failure to pay any amount of tax required to be shown on a return within 21 days of the date of a notice and demand therefor.

resulting from the Federal audit adjustment of the partnership was reportable in the tax year 1985, not 1980 as maintained by the Division. Along with their claim for refund, petitioners filed a form IT-201-X, Amended Resident Income Tax Return for 1985, on which they computed additional tax due in the amount of \$4,294.00 resulting from the increase in partnership income attributable to the Federal audit of the partnership. Therefore, petitioners are claiming a refund due of \$28,762.66 (\$33,056.66 additional tax, penalty and interest paid for 1980 less \$4,294.00 which petitioners claim they owe for 1985).

4. On October 30, 1995, the Division issued a Notice of Disallowance which disallowed, in full, petitioners' claim for refund. The Notice of Disallowance stated that a search of the Division's records indicated that petitioners would send documentation to show that the audit adjustment of the partnership was for the tax year 1985 and not 1980. However, since the documentation was never received, the claim for refund was disallowed.

5. In order to verify the year for which the Federal adjustment was made, the Division requested petitioners' Federal income tax returns and statements of account for the tax years 1980 and 1985. The tax year on the statement of account for 1980 is indicated by the number "30 8012." The document also shows that additional tax was assessed in the amount of \$38,224.00, plus penalty and interest and that a payment of \$47,352.00 was received on December 11, 1987. Along with their brief, petitioners submitted an IRS tax bill in the amount of \$47,352.00 and a copy of their check dated December 8, 1987 in that amount. Both the IRS bill and petitioners' check contain various numbers including "30 0 8012" which indicates that the tax bill pertained to the 1980 tax year.

The Federal statement of account for 1985 shows that a bill in the amount of \$1,086.30 was issued on September 7, 1989, a date which is nearly two years after petitioners made their

payment of \$47,352.00.

***STATEMENT OF PETITIONERS' POSITION***

6. In both their petition and brief, petitioners maintain that, during 1986 and 1987, they were notified that the partnership was being audited by the IRS. They were further notified that the IRS had proposed a disallowance of various deductions by the partnership and that a settlement had been agreed upon between the partnership and the IRS. Thereafter, petitioners met with the IRS at the Appeals Section in Garden City, New York and reached a settlement with the IRS with respect to their prior years' tax returns. Petitioners state that this income from the partnership was reportable as additional income for 1985 and that petitioners fully paid their Federal tax liability. Thereafter, they filed a New York State amended return for 1985 which reflected additional tax due of \$4,294.00 plus interest to the date of payment. Petitioners have offered no documentary evidence to support their contention that the additional income resulting from the Federal audit changes of the partnership was reportable as additional income for 1985 rather than for 1980 as is asserted by the Division.

***CONCLUSIONS OF LAW***

A. Tax Law § 659 requires taxpayers to report Federal changes to the Division within 90 days after the final determination of such changes. There is no dispute that petitioners failed to report the changes resulting from the settlement agreed to by the IRS and the partnership. Accordingly, the Division properly issued a notice and demand to petitioners pursuant to the provisions of Tax Law § 681(e)(1).

B. With certain exceptions not relevant in this matter, Tax Law § 689(e) provides that, with respect to all matters arising out of Article 22 of the Tax Law, the burden of proof shall be upon the petitioners. While petitioners have consistently maintained that the additional income

resulting from the audit of the partnership and subsequent disallowance of certain of its deductions was reportable as additional income to them in 1985 rather than in 1980, they have failed to provide any proof whatsoever to substantiate their contention. Accordingly, it must be determined that the Division properly denied petitioners' claim for refund.

C. The petition of James and Constance Goodwin is hereby denied.

DATED: Troy, New York  
June 3, 1999

/s/ Brian L. Friedman  
ADMINISTRATIVE LAW JUDGE