

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SCOTT GOLDSTEIN AND LAUREN GABOR :
for Redetermination of a Deficiency or for Refund of :
Personal Income Tax under Article 22 of the Tax Law :
for the Years 1996 through 2002 and 2004. :

DETERMINATION
DTA NOS. 823702 AND 823710

In the Matter of the Petition :
of :
ARNOLD AND ARLENE GOLDSTEIN :
for Redetermination of a Deficiency or for Refund of :
Personal Income Tax under Article 22 of the Tax Law :
for the Years 1994 through 1999 and 2004. :

Petitioners Scott Goldstein and Lauren Gabor filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1996 through 2002 and 2004.

Petitioners Arnold and Arlene Goldstein filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1994 through 1999 and 2004.

A consolidated hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on November 9, 2011, at 10:00 A.M., with all briefs to be submitted by April 6, 2012, which date commenced the

six-month period for issuance of this determination. Petitioners appeared by Samson Management, LLC (Ray Cruz, Esq., of counsel). The Division of Taxation appeared by Mark F. Volk, Esq. (Robert Tompkins, Esq., of counsel).

ISSUE

Whether interest on petitioners Scott Goldstein and Lauren Gabor's refunds for 1996 and 1997 and petitioners Arnold and Arlene Goldstein's refunds for 1994 and 1997 should accrue from the date of the amended return claiming the refund or the date the original return was filed.

FINDINGS OF FACT

1. On or about August 31, 2006, petitioners Scott Goldstein and Lauren Gabor executed an Internal Revenue Service (IRS) form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, thereby accepting certain deficiencies, overstatements of tax and additions to tax. The agreement covered the years 1994 through 1997. On or about January 10, 2008, the IRS issued to petitioners Scott Goldstein and Lauren Gabor final federal determinations for the years 1998 through 2002.

2. In response to the executed offer to waive restrictions and the final federal determinations, petitioners Scott Goldstein and Lauren Gabor filed amended nonresident and part-year resident income tax returns, form IT-203-X, for the years 1996 through 2002.

In addition, on or about March 8, 2007, petitioners Scott Goldstein and Lauren Gabor filed an amended resident income tax return, form IT-203-X, for the year 2004, claiming a special mortgage recording tax credit.

3. Following the issuance of credits and refunds by the Division of Taxation (Division) in response to the amended income tax returns, petitioners Scott Goldstein and Lauren Gabor filed

claims for credit or refund of personal income tax, form IT-113-X, for the years 1996 through 2002 and 2004, asserting that the interest calculations on the credits and refunds were incorrect.

4. On September 26, 2008 and July 24, 2009, the Division issued to petitioners Scott Goldstein and Lauren Gabor notices of disallowance of refund claims for the years 1996, 1997, 2000, 2001, 2002 and 2004. The notices state, in part, as follows:

Under section 688 of the NYS tax law, for tax years 1994 thru 1998, interest on an overpayment of tax was payable from the date the amended return was filed to the date the refund was issued. No interest was allowed prior to the filing date of the amended return.

The record in this matter does not contain a notice of disallowance for the years 1998 and 1999.

5. On or about September 25, 2006, petitioners Arnold and Arlene Goldstein executed an IRS form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, thereby accepting certain deficiencies, overstatements of tax and additions to tax. The agreement covered the years 1994 through 1997. On or about February 11, 2008, the IRS issued to petitioners Arnold and Arlene Goldstein final federal determinations for the years 1998 and 1999.

6. In response to the executed offer to waive restrictions and the final federal determinations, petitioners Arlene and Arnold Goldstein filed amended resident income tax returns, form IT-201-X, for the years 1994 through 1999.

In addition, on or about March 8, 2007, petitioners Arnold and Arlene Goldstein filed an amended resident income tax return, form IT-201-X, for the year 2004, claiming a special mortgage recording tax credit.

7. Following the issuance of credits and refunds by the Division in response to the amended income tax returns, petitioners Arnold and Arlene Goldstein filed claims for credit or

refund of personal income tax, form IT-113-X, for the years 1994 through 1999 and 2004, asserting that the interest calculations on the credits and refunds were incorrect.

8. On July 17, 2009, the Division issued to petitioners Arnold and Arlene Goldstein a notice of disallowance of refund claims for the years 1994, 1995, 1996, 1998 and 2004. The notice states, in part, as follows:

Under section 688 of the NYS tax law, for tax years 1994 thru 1998, interest on an overpayment of tax was payable from the date the amended return was filed to the date the refund was issued. No interest was allowed prior to the filing date of the amended return.

The record in this matter does not contain a notice of disallowance for the years 1997 and 1999.

9. During the course of the hearing in these matters the parties entered into two identical stipulations that eliminated all but one of the original issues presented. The parties stipulated that with respect to overpayments and deficiencies on all of the petitioners' personal income tax returns resulting from federal audit changes reported by petitioners for the years at issue, the Division allowed the overpayments to offset deficiencies for the purpose of reducing or eliminating interest accruals on the deficiencies. The parties also stipulated that computations include the appropriate reduction for overpayment years of penalty and interest previously paid that are reduced as a result of the reduction of income from the federal changes.

The stipulation also provided that the Division compute interest on the refunds claimed by petitioners for the special mortgage recording tax credit.

10. The filing of the federal changes, amended personal income tax returns and the stipulations resulted in the following adjustments for petitioners Scott Goldstein and Lauren Gabor: an overpayment of tax in the amount of \$112,867.00 for 1996; an overpayment of tax in the amount of \$52,733.00 for 1997; an underpayment of tax in the amount of \$2,505.00 for 1998; an underpayment of tax in the amount of \$8,643.00 for 1999; an overpayment of tax in the

amount of \$54,770.00 for 2000; an overpayment of tax in the amount of \$463.00 for 2001; and an overpayment of tax of \$145.00 for 2002. For the overpayment years of 1996 and 1997 the Division accrued refund interest only from the filing date of the refund claim, rather than from the original return filing date. Interest on the 2000, 2001 and 2002 overpayments was accrued from the original return filing date. Underpayment years (1998 and 1999) accrued interest on the deficiencies from the original return due dates.

11. The filing of the federal changes, amended personal income tax returns and the stipulations resulted in the following adjustments for petitioners Arnold and Arlene Goldstein: an overpayment of tax in the amount of \$10,992.00 for 1994; an underpayment of tax in the amount of \$17,210.00 for 1995; an underpayment of tax in the amount of \$31,180.00 for 1996; an underpayment of tax in the amount of \$1,906.00 for 1997; an overpayment of tax in the amount of \$25,847.00 for 1998; and an overpayment of tax of \$104,055.00 for 1999. For the overpayment years of 1994 and 1997, the Division accrued refund interest only from the filing date of the refund claim, rather than from the original return filing date. Interest on the 1999 overpayment was accrued from the original return filing date. Underpayment years accrued interest on the deficiencies from the original return due dates.

CONCLUSIONS OF LAW

A. The issue in these matters is legally indistinguishable from that in ***Matter of Michael A. Goldstein A No. 1 Trust*** (Tax Appeals Tribunal, June 29, 2011), ***Matter of Michael A. and Janice L. Goldstein*** (Tax Appeals Tribunal, September 22, 2011), ***Matter of James McNulty (Deceased) and Shari McNulty*** (Tax Appeals Tribunal, January 23, 2012) and ***Matter of Michael Goldstein and Janice Goldstein*** (February 23, 2012). Following the Tribunal's decisions, it is determined that interest on petitioners Scott Goldstein and Lauren Gabor's refunds

for 1996 and 1997 and petitioners Arnold and Arlene Goldstein's refunds for 1994 and 1997 should accrue from the filing date of the amended returns claiming the refund, pursuant to Tax Law § 688(a)(former [3]) and Tax Law § 688(former [c]). The record in these matters contains no facts that would merit a conclusion different from any of the prior decisions of the Tax Appeals Tribunal. Therefore, it is determined that petitioners Scott Goldstein and Lauren Gabor are not entitled to any additional interest on their overpayments for the tax years 1996 and 1997 and petitioners Arnold and Arlene Goldstein are not entitled to any additional interest on their overpayments for the tax years 1994 and 1997.

B. The computations of the overpayments, underpayments and interest thereon as detailed in Findings of Fact 9, 10 and 11 are sustained.

C. The petitions of Scott Goldstein and Lauren Gabor and Arnold and Arlene Goldstein are granted to the extent indicated in Conclusion of Law B; in all other respects the petitions are denied.

DATED: Albany, New York
June 14, 2012

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE