

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
DARLEEN MARCH : DETERMINATION
for Redetermination of Deficiencies or for Refund of : DTA NO. 826057
Personal Income Tax under Article 22 of Tax Law for the :
Years 2004, 2005, 2006, 2007 and 2008. :
_____ :

Petitioner, Darleen March, filed a petition for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 2004, 2005, 2006, 2007 and 2008.¹

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, in Albany, New York, on March 13, 2015 at 10:30 A.M., with all briefs due by June 29, 2015, which date began the six-month period for the issuance of this determination. Petitioner appeared by Roger Gromet, Esq. The Division of Taxation appeared by Amanda Hiller, Esq. (Leo Gabovich).

ISSUE

Whether petitioner has established that she is entitled to a refund of penalties assessed on taxes due for the years 2004, 2005, 2006, 2007 and 2008 because she has established reasonable cause therefor, based on her husband's alcoholism and abuse, the disposition of a criminal matter in the Albany City Court and/or the cancellation of penalties for the same periods by the Internal Revenue Service.

¹Although the Order issued by the Bureau of Conciliation and Mediation Services (BCMS) only referenced the years 2004 through 2006, it is apparent that this was an oversight. The application for refund and the request for a BCMS conference clearly referenced the years 2004 through 2008 and attached a copy of the Consolidated Statement of Tax Liabilities issued to petitioner on August 13, 2010.

FINDINGS OF FACT

1. As a result of an investigation of real estate professionals who had not filed personal income tax returns in New York State, the Division of Taxation's (Division) Revenue Crimes Bureau conducted an investigation of Darleen and Stanley March. When they interviewed Darleen March (petitioner) in January of 2008, she admitted they were behind in payments to the Internal Revenue Service (IRS) and had just sent it a payment of \$10,000.00.

In an interview with petitioner's accountant, it was discovered that the Marches' 2004 personal income tax return had been prepared and turned over to petitioner in the summer of 2007, but not filed. In addition, in January, 2008, the accountant stated to the revenue crimes agents that she had just completed the tax returns for 2005 and had received information for preparing the 2006 returns. On January 17, 2008, the Marches' New York State personal income tax return for 2004 was received by the Revenue Crimes Bureau with a payment of \$5,861.00, the tax due stated thereon.

2. The matter was referred to the Albany County District Attorney for prosecution and Darleen and Stanley March appeared in Albany City Court on May 6, 2008, facing a charge of repeated failure to file personal income tax returns pursuant to Tax Law § 1802(a), a class E felony. Prior to the proceedings, petitioner and Stanley March filed their joint personal income tax returns for the years 2005 and 2006 on or about May 3, 2008, with a payment of \$10,153.00 drawn on petitioner's checking account, with checks signed by her. Therefore, when petitioner and her husband appeared in Court for the first time, taxes for the years before that Court, 2004, 2005 and 2006, had been paid and the returns filed.

The criminal matter was resolved by a plea agreement. City Court Judge Kretser noted on his file that Stanley March agreed to plead to disorderly conduct, to pay back taxes and a fraud

penalty, and complete 20 hours of community service. Upon satisfaction of these terms, he was to receive a conditional discharge and no fine. Petitioner agreed to plead guilty to disorderly conduct and agreed to complete 20 hours of community service, after which she would receive a conditional discharge and no fine. The Court noted on both files that proof had been submitted and the cases were closed October 27, 2008. No further mention or provision was made for payment of a fraud penalty in the criminal matter. The report of the criminal proceeding prepared by the Revenue Crimes Bureau indicated that it believed Judge Kretser's sentence directed that all further payments be made through the Division. Petitioner submitted no other evidence to explain the failure to pay a fraud penalty as ordered by the Court.

3. Petitioner and Mr. March also failed to file timely returns for the years 2007 and 2008. When the returns were filed in 2008 and 2009, respectively, the Division issued notices and demands for the taxes shown due but not remitted with the returns. The notice and demand for 2007 was issued on October 30, 2008, stating a tax due of \$5,643.00 plus penalty and interest. The notice and demand for 2008 set forth tax due of \$585.00 plus penalty and interest.

The Division issued a Notice of Deficiency for the years 2004, 2005 and 2006 on July 23, 2009. The notice indicated additional tax due for 2004 of \$5,658.00 plus fraud penalty and interest, with a credit of 7,096.73, for a balance due of \$4,567.47. For 2005, the notice assessed only penalty and interest totaling \$5,326.15. For 2006, the notice assessed only penalty and interest totaling \$2,247.69. This Notice of Deficiency was not protested and became a fixed a final liability on October 21, 2009.

4. Petitioner was issued a Consolidated Statement of Tax Liabilities, dated August 13, 2010, which indicated that she was liable for three fixed and final tax assessments for personal income tax that were ripe for collection. In addition, the statement indicated that there was

another assessment issued to her for the year 2007 that stated additional interest and penalty due but not yet ripe for collection. The following chart illustrates the fixed and final liabilities subject to collection:

Assessment ID	Tax Year	Tax	Interest	Penalty	Payments	Balance
L-032357432-5	2006	\$5,658.00	\$4,216.36	\$9,755.00	\$12,096.73	\$7,532.63
L-030866136-9	2007	\$5,643.00	\$1,043.24	\$634.09	\$134.47	\$7,185.66
L-033033888-9	2008	\$585.00	\$64.94	\$71.64	\$0.00	\$721.58
Total				\$10,460.73		<u>\$15,439.87</u>

The following chart indicates an additional assessment for 2007, that was not yet subject to collection on August 13, 2010:

Assessment ID	Tax Year	Tax	Interest	Penalty	Payments	Balance
L-034165327-9	2007	\$0.00	\$2.35	\$196.36	\$0.00	\$198.71
Total						<u>\$198.71</u>

5. The Division issued a warrant against petitioner and Stanley March, dated July 27, 2009, which was filed in the Warren County Clerk's office on August 3, 2009, the basis of which was assessment number L-030866136-9. The tax year covered by this assessment was 2007 and set forth additional tax due of \$5,508.33, interest of \$276.07 and penalty of \$505.88, for a total due of \$6,290.28. A Judgment Transcript of the warrant filed in Warren County was entered in Essex County on August 11, 2010.

6. Petitioner and her spouse, Stanley March, were married in 1998 and remained so until Stanley March died on July 11, 2009. A contributing cause of death, as listed on his death certificate, was acute alcohol intoxication and cirrhosis. Mr. March suffered from alcoholism for several years prior to his death, a fact attested to by his physician, Dr. Howard P. Fritz, his step-daughter and petitioner.

7. Following Mr. March's death, petitioner sold their residence in Schroon Lake, Essex County, New York. At that time, the closing statement, dated August 19, 2010, reflected a credit to the purchaser described as "Pay NYDT&F Lien" in the sum of \$15,443.04, an amount almost identical to the sum set forth on the Consolidated Statement of Tax Liabilities issued to petitioner on August 13, 2010. Subsequently, the warrant referenced above in Finding of Fact 2 was satisfied on October 15, 2010, as noted on the Judgment Transcript issued by the Warren County Clerk's office on the same date.²

8. On or about July 9, 2012, petitioner, through her representative, applied for a refund of the penalties paid on the three fixed and final assessments subject to collection, as set forth in Finding of Fact 3, in the sum of \$10,460.73. In her second amended petition, petitioner revised the refund request so that she now seeks a refund of the full amount paid from the proceeds of her home in Schroon Lake in the sum of \$15,443.04.³ The refund application was denied by the Division on August 27, 2012. Petitioner requested a conference in BCMS on August 3, 2012 and, by BCMS order, dated October 25, 2013, the refund denial was sustained. Petitioner then filed a petition in the Division of Tax Appeals, dated January 20, 2014, challenging the BCMS order.

9. Petitioner and Mr. March filed jointly during his lifetime. For the years 2004 through 2006, petitioner received commissions as a licensed real estate broker. Also, the couple reported income and loss from Adirondack Country Homes Realty, Inc., which petitioner owned, and

² The amount paid out of the proceeds of the sale of the house was apparently for the assessments listed on the Consolidated Statement of Tax Liabilities. It is noted that this statement included the unpaid tax, penalty and interest assessed for 2007, covered by the warrant filed in Warren County.

³ Petitioner did not substantiate this figure with a breakdown of tax, penalties and interest, but it appears to include the tax assessed for 2007, \$5,643.00.

Internet Time Share Resources, Inc., owned by Mr. March. The latter reported income from its operation as an internet company that leased out mainframe computer time. Both companies were profitable during the years in issue.

10. Petitioner established Adirondack Country Homes Realty, Inc., after beginning in the real estate field as an agent. She then formed a partnership with another agent and began operations as Adirondack Country Homes and eventually became the sole owner of the business. At one time, the company had eight offices and was quite lucrative. For a time, Mr. March was affiliated with the company as an agent.

11. Petitioner provided corporate tax records for her real estate company to the couple's accountant, which were then incorporated into the final tax returns, while Mr. March provided the tax records for his business. During the years in issue, the couple always employed an accountant for the preparation of their tax returns, although several different accountants were employed over the years.

12. Petitioner was aware that the returns in issue were not filed on time and pointed this out to her husband on many occasions. She explained that she was not sure why the returns were not filed, but thought Mr. March may have located additional information necessary for the return preparation. She also conceded that Mr. March's alcoholism and abusive behavior caused her to avoid confrontations with him, and that the filing of tax returns, a job they had hired an accountant to complete, "wasn't the most important issue in the family."

13. The couple's income was deposited into bank accounts over which petitioner had authority. However, even though petitioner had equal authority and control, her husband managed all their accounts, even after checks were returned to them in the years 2007, 2008 and 2009. Credit cards were applied for and maintained in petitioner's name, but she was permitted

to make payments with credit cards only with her husband's approval. This was explained as part of what she referred to as the "credit card juggle," a scheme Mr. March employed, and in which petitioner concurred, to maintain zero interest balances by using several credit cards. The credit card juggle was utilized throughout the years in issue, notwithstanding Mr. March's alcoholism.

14. Petitioner did have sole control over the checking account for Adirondack Country Homes Realty, Inc., but only used her control to pay routine bills. After Mr. March became involved in her real estate business, he began making "program" decisions on behalf of that company. Petitioner explained that Mr. March was "smart" and it was "wise to listen to him."

15. By the end of 2008, Mr. March's alcoholism led petitioner to consider a divorce due to his mood swings, lack of mental acuity, disputes and abuse. These issues were echoed by petitioner's daughter, who recalled Mr. March's alcoholism, control of the family's finances and fits of anger and abuse, which began as early as 1999 or 2000. On one occasion, July 5, 2006, petitioner's daughter called the police to report an episode of abuse, to which New York State Police responded and reported that petitioner reported a verbal altercation with her husband, who was very intoxicated, and had threatened to "kill her." Petitioner refused to request that her husband be arrested and the matter was closed with a domestic violence report.

16. Despite his serious condition, Mr. March was never hospitalized and did not seek rehabilitation for his alcoholism. He attempted abstinence from alcohol on his own, without success. Despite the serious and debilitating disease from which he suffered, he was functional in many respects, continuing to drive, operate and manage his company and participate in petitioner's real estate business. He was able to communicate with accountants, successfully

juggle credit cards to evade interest payments on outstanding balances and manage the family's finances.

17. In 2008, coinciding with her thoughts of divorce, petitioner approached the couple's accountant to discuss the option of changing her filing status to married filing a separate return. Petitioner could not explain why she had never done this previously, even though she did not know if returns were being filed. She recounted how extensions and returns prepared by the accountant were placed before her and she signed them as directed, but she did not know "what years she signed when."

18. Petitioner submitted IRS account transcripts, which indicate that certain penalties were removed from her account for the years in issue herein. No explanation for the modifications was provided on the account transcripts and petitioner did not know why the penalties had been removed. Further, petitioner recalled that innocent spouse relief had been requested from the IRS for the years in issue, but the request was denied, as noted on the account transcripts. No similar request for innocent spouse relief was made in New York.

SUMMARY OF THE PARTIES' POSITIONS

19. Petitioner contends that the Division's failure to respond to her amended petition and notices to admit do not address her claim for abatement of penalty and, in fact, support her claim.

20. Petitioner argues that her late husband, Stanley March, suffered from a serious disease, which she believes was the direct cause for the failure to file income tax returns on time and which constitutes reasonable cause for the abatement of penalties.

21. Petitioner maintains that the lien filed by the Division against her was unauthorized because the Albany City Court did not order her to pay the fraud penalties. Rather, that Court had ordered Mr. March to pay the penalties and, therefore, the enforcement procedure against

petitioner had been settled. Further, she asserts that the lien filed in Essex County was filed after the death of Mr. March and was invalid.

22. Petitioner argues that she is entitled to relief pursuant to Tax Law § 654(c) because the IRS determined that she was eligible for relief from joint and several liability on her joint returns for the same period.

23. The Division argues that petitioner has not established a reasonable cause for their failure to file their income tax returns on time. In fact, the fraud penalties imposed were based upon petitioner's consistent failures to file and substantial underpayments of tax for the years 2004 through 2008.

24. The Division contends that Mr. March's disease does not qualify as a serious disease that caused the failures to file and the substantial underreporting.

25. The Division believes its failures to file a response to petitioner's amended petition and its notices to admit were immaterial, since petitioner raised no new issues or allegations that the Division had not already addressed.

CONCLUSIONS OF LAW

A. This matter turns on the issue of whether petitioner has established a basis for the refund of penalties assessed to both petitioner and her late husband. The penalties were paid out of proceeds received on the sale of the marital home in Schroon Lake, New York, which also satisfied the warrant filed with respect to the assessment issued for 2007.

The Division's Revenue Crimes Bureau discovered petitioner's failure to file in an audit program that targeted real estate professionals who had failed to file and or pay their taxes. In the Marches' case, it was discovered that they had not filed for several years, including the years in issue, which according to Mr. Johnny Neal, the auditor who testified at hearing, justified the

imposition of fraud penalty. The case was referred to the Albany County District Attorney's office, which filed charges against petitioner and Stanley March pursuant to Tax Law § 1802(a), repeated failure to file personal income taxes for the years 2000 through 2006. The matters went before Judge Kretser in the Albany City Court in May, 2008, and were resolved by plea agreements on July 17, 2008, which was memorialized, albeit very briefly, by Judge Kretser on the jackets of the Court's criminal files. The notes indicated that Mr. March pled guilty to disorderly conduct and was ordered to perform 20 hours of community service and pay the back taxes and "a" fraud penalty. Mrs. March pled guilty to disorderly conduct and was ordered to perform 20 hours of community service. Upon successful completion of the terms of the pleas, the defendants were to receive a conditional discharge and no fine. The cases were closed on October 27, 2008 with the same notation on each file: proof submitted and case closed.

Petitioner argues that Judge Kretser's notation on Mr. March's file indicates that the Judge had ordered him to pay the taxes and a fraud penalty, thereby excusing petitioner from her joint and several legal obligation to do so. Petitioner concludes that this relieved her of her duty to pay the fraud penalty and prohibited the Division from filing a warrant against her for the taxes or fraud penalty, since the Albany City Court judgment only ordered Mr. March to pay the taxes and fraud penalty.

Judge Kretser's very brief summaries of the plea agreements did not elaborate on the payment of taxes or the fraud penalty she had ordered in resolution of the criminal matter. Since the Division had not issued its Notice of Deficiency with respect to the years before the Court, Judge Kretser was not referring to taxes or fraud penalty that had been imposed by the Division in a civil action. Since the returns and taxes for the years before the Court had been filed and paid prior to petitioner's first appearance in Albany City Court, the only requirements to be

fulfilled before the cases could be closed were performance of 20 hours of community service and payment of a criminal fraud penalty. The Judge's notes and the record herein do not disclose how those requirements were met, but the Judge stated that satisfactory proof had been submitted and the criminal cases were closed. The Judge's notes were silent with respect to any subsequent civil action, much less any constriction of the Division's rights to collect any additional taxes, penalties and interest due from petitioner and her husband. Without more, the argument that this criminal matter relieved petitioner of her tax liability pursuant to the assessments issued to her must be rejected. There is no credible evidence that petitioner's civil liabilities were discharged by the Albany City Court.

Further, it is noted that the fact that the Judge imposed a fraud penalty in the criminal action, which was accepted in the plea agreement with Mr. March, indicates that the Court found fraudulent conduct and penalized it. It is not disclosed why the Judge ordered only Mr. March to pay the taxes due and the fraud penalty, since the obligation emanated from the couple's jointly filed tax returns. For that reason, petitioner's argument that Judge Kretser's notes shield her from further action by the Division to impose fraud penalty is unwarranted and without any basis in the record. The Judge's notes acknowledge the most important factors supporting the Division's assertion of a fraud penalty: she ordered the taxes and a fraud penalty to be paid based on a repeated failure to file income tax returns and pay the taxes due.

The Court of Appeals has repeatedly emphasized the necessity of placing all promises included in the plea agreement on the record to assure the continued validity and usefulness of the plea bargaining process. (*Matter of Kuriansky*, 55 NY2d 116, *revg* 83 AD2d 630 [1982].) Since there was no mention of an abridgment of the Division's right to seek repayment of additional tax, penalties and interest in a civil action, no such curtailment shall be inferred from

Judge Kretser's sentence herein. Further, the report of the criminal action by the Revenue Crimes Bureau supports the conclusion that further action was anticipated to ensure repayment of all taxes, penalties and interest owed to New York State.

This matter is distinguishable from those situations where a party argues that there was a substantial difference between the promises made during the plea agreement as enticement for a defendant to accept a plea and the terms of subsequent action by the Division in its civil action. (*See Matter of N.T.J. Liquors, Inc.*, Tax Appeals Tribunal, May 7, 1992.) Here, the Judge's notes do not address or constrict the Division's civil enforcement actions.

Also, it is noted that, notwithstanding petitioner's arguments, there was never a connection between the criminal matter and the liens filed against petitioner and Mr. March in Warren and Essex Counties. First, the warrant was the result of the civil action taken by the Division following the issuance of the Notice of Deficiency that became a fixed and final assessment when petitioner failed to protest. Second, the warrant only concerned the tax, penalty and interest for 2007, a year that was never before the Court. The warrant and subsequent judgment transcript were filed properly by the Division after issuance of a notice and demand for payment. (Tax Law § 692[c].)⁴

On or about July 23, 2009, almost nine months after the criminal case was closed, a notice of deficiency was issued to petitioner and Stanley March, who had passed away on July 11, 2009, reflecting taxes paid for the years 2004, 2005 and 2006, and the addition of fraud penalties pursuant to Tax Law § 685(e)(1) and (2) and interest. The Division properly assessed petitioner for tax, penalty and interest based on her joint and several liability for all of the years in issue.

⁴ The years 2007 and 2008 were not included in the criminal action. However, petitioner did file those returns late and was billed by means of two notices and demands for payment of the taxes, penalty and interest due.

(Tax Law § 651[b][2].) Petitioner failed to protest this deficiency notice and it became a fixed and final assessment. (Tax Law § 681[b].) Petitioner has not directly challenged the fraud penalty asserted pursuant to Tax Law § 685(e)(1) and (2) and has conceded that she and Stanley March consistently failed to file New York personal income tax returns for the years in issue and to pay the taxes due, resulting in a pattern of substantial underpayment their joint income tax liability, which justified the imposition of fraud penalty. (*See Merritt v. Commissioner*, 301 F2d 484 [5th Cir 1962]; *Matter of Sener*, Tax Appeals Tribunal, May 5, 1988; *Matter of Waples*, Tax Appeals Tribunal, January 11, 1990.) Undoubtedly, this repeated failure to file and pay their income taxes was the reason the plea agreement included a fraud penalty in the criminal action.

In addition, petitioner's appeal for abatement of the fraud penalty pursuant to 20 NYCRR 2392.1 is unavailing because reasonable cause is not considered where the Division has established that the failure to file and pay the taxes is due to fraud (20 NYCRR 2392.1[a][1]). Therefore, with respect to the years 2004, 2005 and 2006, where fraud penalty was assessed, reasonable cause is inapplicable. For the years, 2007 and 2008, where only negligence penalty was assessed, reasonable cause was considered, as discussed below, but petitioner has not demonstrated entitlement thereto.

B. Notwithstanding the outcome in the criminal proceeding before Judge Kretser and the applicability of reasonable cause where fraud has been established, petitioner argues that she has established reasonable cause for the abatement of all the penalties assessed based on her husband's alcoholism, which she believes is a serious illness, as that term is defined in 20 NYCRR 2392.1(d)(1)(i). Petitioner's belief that alcoholism is a serious disease is based on the fact that it was a contributing factor in his ultimate demise, as noted on his death certificate. It is undisputed that alcoholism has deleterious effects on health, including fatal effects. However,

the regulation at 20 NYCRR 2392.1(d)(1)(i) contemplated serious illnesses that precluded timely compliance, i.e., timely filing of tax returns and payment of tax.

The facts and circumstances adduced herein do not support the conclusion that Mr. March's alcoholism precluded timely filing. Mr. March, while afflicted with alcoholism, was extremely functional. During the audit years he was able to profitably manage and operate his own computer business, assist in the operation and management of petitioner's real estate business and manage the family's finances, even exhibiting an adroitness at juggling credit cards to carry balances without interest charges. With petitioner's compliance, he controlled the filing of tax returns and conferred with the couple's accountants with regard to the information needed for filing. It cannot be said that his disease was serious as contemplated by 20 NYCRR 2392.1(d)(1)(i) and, therefore, does not provide a basis for finding reasonable cause for the abatement of penalty. (*See Matter of Bernfeld*, 117 AD3d 26 [1ST Dept 2014] [where the court rejected respondent's argument that his alcoholism caused his failure to file and pay his state taxes for four years because there was no expert evidence presented establishing a direct, causal connection between his alcoholism and his failure to file and pay taxes].)

The lack of proof of a direct, causal link between Stanley March's alcoholism and his failure to have the couple's returns prepared, filed and the taxes paid severely undermines petitioner's argument that it was the reason for her failure to file and pay the taxes due. Likewise, petitioner has failed to establish the causal connection between Stanley March's alcoholism and the returned checks, which petitioner vaguely remembered happening in 2007 and thereafter. No checks were produced to prove their return and the dates thereof. In any event, this mere assertion does not constitute credible evidence to show that Mr. March had lost

the ability to file and pay the couple's taxes in a timely manner. For these reasons, petitioner has not established reasonable cause for the abatement of penalty for the years 2007 and 2008.

C. Payment of tax, penalty and interest for all of the years in issue was made on or about August 19, 2010 out of the proceeds from the sale of petitioner's home, which disbursement also satisfied the outstanding warrant on October 15, 2010. Although petitioner argues that the warrant was invalid because it was filed against Stanley March after he had died, the fact that the tax liability underlying the warrant was joint and several meant that petitioner was equally liable for the entire amount due and the satisfaction of the warrant as to her was proper. (Tax Law § 651[b][2].)

D. Petitioner contends, in the alternative, that Tax Law § 654(c) is applicable to her circumstances and therefore supports her claim for refund. The basis of the claim is rooted in IRS account transcripts she submitted into evidence for the years 2005, 2006 and 2007. For each of these years, the IRS canceled penalties for late payment of tax, failure to pre-pay tax, and filing after due date. No explanation for the abatement of penalty was given on the transcripts and petitioner testified that she had no independent knowledge of why the penalties were abated.

The account transcripts indicated, and petitioner confirmed, that innocent spouse relief had been sought from the IRS for the years 2005, 2006 and 2007, but had been denied. Tax Law § 654(c) provides that where an individual has been relieved of a federal tax liability pursuant to IRC § 6015, there shall be a rebuttable presumption that the individual shall also be entitled to equivalent relief under Tax Law § 654(c) for and understatement of tax for the same taxable year attributable to the same erroneous item to which the federal liability was attributable.

New York's innocent spouse rule is contained in Tax Law 654(a) and expressly incorporates the federal provisions regarding innocent spouse status found in IRC § 6015. The

latter section provides that a spouse may receive relief from joint and several liability if: (a) a joint return has been made for the tax year; (b) on the return there is an understatement of tax attributable to erroneous items of one of the individuals filing the joint return; (c) the innocent spouse establishes that in signing the return she did not know and had no reason to know that there was an understatement; (d) under all the facts and circumstances, it would be inequitable to hold the innocent spouse liable for the deficiency in tax attributable to such understatement; and (e) the innocent spouse elects this relief within two years after any collection activity has begun against her (IRC § 6015 [b][1]).

Evident from the account transcript, petitioner did not prevail in her attempt to qualify under IRC § 6015. Therefore, petitioner cannot avail herself of the relief provided for in Tax Law § 654(c). Further, even though petitioner never applied for and is not eligible for relief under Tax Law § 654(a), she would not have been successful if she had invoked the catchall equity relief contemplated by the language in (d) above, given the facts adduced herein and the conclusions reached above.

Petitioner's argument that Mr. March's alcoholism and its deleterious effects on his life and that of his family was the reason she was unable to timely file her returns and pay the tax due has been rejected because petitioner has not clearly established a causal connection between the disease and petitioner's failure to file and pay taxes.

Mr. March's pattern of bad behavior began over six or more years prior to the years in issue, which would imply complicity with his control of the couple's finances and tax return preparation for many years prior to those in issue. Petitioner's career as a licensed real estate broker with her own realty company with eight offices in its heyday, presents an individual with a higher level of business acumen and intelligence that had an appreciation for filing returns and paying taxes in a timely manner. Placement of trust in a person suffering from alcoholism belies

petitioner's professional background and supports a conclusion that she did not raise a valid reason for entitlement to innocent spouse relief under IRC § 6015, and derivatively Tax Law § 654(a). Her reliance on his business knowledge, even in her own realty company, indicates that she respected his abilities, trusted his financial advice and followed it, noting that it was "wise to follow his advice." In fact, the businesses profited during the years in issue and petitioner benefitted from this.

Although petitioner argues that Mr. March's abusive, fear-inducing behavior amounted to justification for the abatement of the penalties assessed, the record does not demonstrate that she ever took any action to confront the failure to file income tax returns and pay the tax due. However, she did reach a point in 2008 when she decided to investigate filing separately, something she could have attempted during the years in issue. She admitted that filing and paying taxes were not the family's priority.

She conceded that she signed tax forms that were prepared for her signature by the accountant, but did not question what they were or when they were due. Petitioner knew her husband had delayed the preparation of the returns by failing to provide the necessary documentation to the accountant, but assumed that he was trying obtain information or documentation that would reduce their liability. Once again, a delay that also benefitted her.

She had the authority to write checks on the family's checking account and obviously had her own account from which she wrote the tax payments for 2005 and 2006, submitted to the Division prior to the criminal action in May 2008. In addition, the curb on her use of credit cards seemed more for the couple's credit card juggle, which benefitted her as well as Mr. March, than a prohibition from using the cards by Mr. March.

Petitioner's choice to follow the path of least resistance with her husband resulted in returns that were not prepared in a timely fashion.

E. Given the conclusions reached above, petitioner's arguments with respect to the Division's failure to file an amended answer to her amended petitions are moot. The most significant change made was the amount of the refund claimed, which petitioner modified to conform to the check cut from the proceeds of petitioner's home sale. However, petitioner did not demonstrate what constituted this sum. Since it has been concluded that the warrant for the taxes, penalty and interest assessed for 2007 was satisfied out of the house proceeds, and petitioner has not challenged her liability for the taxes outstanding, she would not be eligible for a refund of that amount and her modification of the amount claimed in the second amended petition was, therefore, invalid.

The Division's failure to answer the amended petitions may have had the consequence of admitting the modification in the amount of the refund request, but nothing further.

F. The petitions of Darleen March are denied and the Division's refund denial, dated August 27, 2012, is sustained.

DATED: Albany, New York
December 17, 2015

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE