

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition
of
RAYMOND AND BETTY KARLINSKY
for Redetermination of a Deficiency or for Refund of
Unincorporated Business Tax under Article 23 of the
Tax Law for the Year 1980.

DECISION
DTA NO.802803

Petitioners, Raymond and Betty Karlinsky, c/o Gerald Stahl, Esq., 175 Fifth Avenue, New York, New York 10010, filed an exception to the determination of the Administrative Law Judge issued on September 1, 1988 with respect to their petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1980 (File No. 802803). Petitioner appeared by Gerald Stahl, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Herbert Kamrass, Esq., of counsel).

Both petitioners and the Division submitted letters in lieu of a brief.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioners have shown that their failure to file unincorporated business income tax returns was due to reasonable cause and not due to willful neglect such that the penalty for failure to file imposed by Tax Law section 685(a) should be abated.

FINDINGS OF FACT

We find the facts as stated in the Administrative Law Judge's determination and such facts are incorporated herein by this reference. Such facts may be summarized as follows.

Petitioner Raymond Karlinsky was an insurance executive during the year 1980, earning his living from two sources. The first source was Karnew Intermediary, Inc., from which Mr. Karlinsky drew a salary as an employee. Karnew was a service company which managed all of the accounting,

bookkeeping, claims and business performed through wholesalers and brokers for a company called Promatora De Occidente Panama, S.A. (hereinafter "POSA"). Mr. Karlinsky's second source of income during 1980 was earned as an insurance consultant for POSA. In his capacity as an insurance consultant, Mr. Karlinsky was an independent contractor who managed POSA's foreign business from London and Mexico City.

POSA held contracts to underwrite insurance for a group of 80 insurance companies, most of which were third-world companies, and POSA's job was to secure and disseminate a portion of the world's reinsurance business among these 80 different companies. POSA engaged Mr. Karlinsky's services for its European business. Mr. Karlinsky opened an office at POSA's behest and staffed it with technical people, including an accountant. He hired corporate counsel for the purpose of approving and working with contracts. A substantial portion of his work included creating contracts between various insurance companies from all parts of the world. He also attended all policy meetings and dealt with all problems that arose on a daily basis. Although it was alleged that Mr. Karlinsky had his own stationery, telephone listing and banking affiliations, no records or proof thereof were produced.

Petitioners, Raymond E. and Betty S. Karlinsky, timely filed a 1980 New York State Income Tax Resident Return, with a properly validated extension of time to file, to which was attached a Supplemental Income Schedule, Federal Schedule E (Form 1040), indicating a net loss of \$169,480.00. Attached to the Schedule E was a handwritten schedule which indicated that petitioner Raymond Karlinsky received \$357,000.00 in consultation fees during the year 1980. As explained above, these fees were received by petitioner Raymond Karlinsky from POSA in his capacity as an insurance consultant.

Upon inspection of the Federal Schedule E attached to Form 1040, the Division of Taxation determined that the consulting fees received by petitioner Raymond Karlinsky in 1980 were subject to unincorporated business tax. Subsequently, on March 9, 1984, the Division issued to Raymond Karlinsky a Statement of Unincorporated Business Tax Audit Changes which set forth the following

explanation:

“The consulting fees received are subject to unincorporated business tax, as an independent consultant.

* * *

Corrected Taxable Income	347,000
Tax @ 4%	13,880
Corrected Unincorporated Business Tax Due	13,880
Unincorporated Business Tax Previously Computed	NONE
Total Additional Tax Due	13,880
Penalties: 685(a)(1)	3,123
685(a)(2)	2,429
685(b)	694
Interest	4,783
Total	24,909”

On April 6, 1984, the Division issued to Raymond E. Karlinsky a Notice of Deficiency for the year 1980 in the sum of \$13,880.00, penalty of \$6,315.40 and interest of \$4,973.30, for a total amount due of \$25,168.70 for the year 1980.

Although petitioner Raymond Karlinsky allegedly created and managed offices in Mexico City and London between 1979 and 1981 for the benefit of POSA, he was unable to provide any records kept in the course of his business operations during the year 1980, or substantiate his claim that income received from POSA was received by him outside of the State of New York. Mr. Karlinsky produced statements of two solicitors with whom he had dealings in Great Britain, but neither gentleman attested to the internal business operations of Mr. Karlinsky or whether Mr. Karlinsky’s unincorporated business operations were wholly or partly carried on within the State of New York. Mr. Karlinsky admitted that he never maintained any personal records of his own with regard to his business in the form of diaries, expense accounts, airline tickets, bank statements or other corroborating evidence of the fact that he was engaged in business out of the country during the year 1980.

OPINION

The Administrative Law Judge determined that petitioners failed to sustain their burden of proof to show that the unincorporated business at issue was carried on either completely or partially without New York State. As a result, petitioners were not allowed to allocate their income within

and without New York State. Additionally, petitioners were held to be responsible for any additional penalty and interest that was due.

On exception petitioners only contest the imposition of the penalty. Specifically, petitioners argue that the failure to timely file and pay with regard to their unincorporated business income was due to reasonable cause and not due to negligence or intentional disregard of the law.

In response the Division requests that the penalties imposed be sustained. Specifically, it is argued that the intentional failure of petitioners to maintain personal records amounted to negligence. Additionally, the Division argues that petitioners offered no reasonable cause for such failure to maintain records.

We affirm the imposition of penalties against petitioners.

Tax Law section 685(a)(1) and section 685(a)(2), respectively, provide for the imposition of penalties for the failure to file a tax return and for the failure to pay tax required to be shown on a return. The penalties can be avoided if such failure is shown to be due to reasonable cause and not due to willful neglect. Further, Tax Law section 685(b) provides for an additional penalty when it is determined that the deficiency at issue is due to negligence or the intentional disregard of the Tax Law.

In order for the penalties to be abated the burden is on petitioners to establish reasonable cause as well as the absence of willful neglect (*see, Matter of Baird v. State Tax Commn.*, 102 AD2d 958; *Matter of Miller v. State Tax Commn.*, 94 AD2d 841). We find that petitioners did not meet their burden. The record indicates that petitioners produced no documentation at all with regard to the unincorporated business income in question. Additionally, we agree with the Administrative Law Judge that petitioners failed to produce any other credible corroborating evidence that work was done exclusively out of New York for the years at issue. While petitioners offered proof with regard to the difficulty encountered in recovering records from the business, no explanation was offered for the failure to maintain personal financial records. Under the circumstances we are not persuaded that petitioners' difficulty in obtaining business records establishes reasonable cause as well as the absence of willful neglect such that penalties should be

abated. The only evidence put forward by petitioners is self-serving testimony. As a result, the imposition of penalties must be sustained.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Raymond and Betty Karlinsky is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of Raymond and Betty Karlinsky is denied and the Notice of Deficiency issued April 6, 1984 is sustained.

Dated: Albany, New York
March 23, 1989

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner