

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
ALLAN R. AND FRANCES G. TESSLER : ORDER AND OPINION
for Redetermination of a Deficiency or for Refund of : DTA No. 813284
Personal Income Tax under Article 22 of the Tax Law :
for the Year 1989. :

On July 11, 1996, petitioners Allan R. and Frances G. Tessler, 1100 Pine Siskin Road, P.O. Box 9205, Jackson, Wyoming 83001, appearing by Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti (Roger Cukras, Esq., of counsel), filed a motion with the Tax Appeals Tribunal to review the Secretary to the Tribunal's decision to hold petitioners' exception to the order of the Administrative Law Judge in abeyance pending a hearing and final determination by the Administrative Law Judge. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (David C. Gannon, Esq., of counsel).

ORDER

Upon reading the Notice of Motion together with the affirmation in support of the motion and attached exhibits, the response of the Division of Taxation in opposition to petitioners' motion and all correspondence between the Secretary to the Tax Appeals Tribunal and both parties and due deliberation having been had thereon,

NOW, upon the motion of Allan R. and Frances G. Tessler, petitioners, it is
ORDERED, that said motion be and the same is hereby denied.

FACTS

The relevant facts concerning this motion are set forth below.

Petitioners filed a petition in this matter with the Division of Tax Appeals on November 9, 1994.

The Division of Taxation's (hereinafter the "Division") answer was due on January 16, 1995.

The Division filed its answer on or about January 27, 1995.

On or about May 2, 1996, petitioners brought a motion pursuant to 20 NYCRR former 3000.4(a) requesting that the Division of Tax Appeals issue a judgment of default in favor of petitioners based on the late filing of the Division's answer.

On June 20, 1996, the Administrative Law Judge issued an order denying petitioners' motion. Paragraph "G" of the order read as follows:

"The motion of Alfred J. and Ruth Fasolino for an order granting a determination on default is denied."

On June 21, 1996, the Administrative Law Judge advised both parties that there had been an error in his order of June 20, 1996 and sent both a corrected copy. Paragraph "G" of the corrected copy of the order read as follows:

"The motion of Allan R. and Frances G. Tessler for an order granting a determination on default is denied."

Petitioners filed a Notice of Exception to the Administrative Law Judge's order on July 5, 1996 at which time the Secretary to the Tax Appeals Tribunal ("Secretary") acknowledged receipt of the exception and established a briefing schedule.

On or about July 8, 1996, the Secretary informed petitioners' representative that petitioners' exception had been mistakenly accepted. By letter dated July 9, 1996, the Secretary informed both parties that petitioners' exception would be held in abeyance pending a hearing and the rendering of a determination by an Administrative Law Judge.

Petitioners then brought this motion requesting that the Tax Appeals Tribunal review the Secretary's decision to hold petitioners' exception in abeyance pending a hearing and determination by an Administrative Law Judge.

OPINION

Our rules of practice and procedure provide, in pertinent part, as follows:

"An order by an administrative law judge on any motion which does not finally determine all matters and issues contained in the petition, for purposes of review by the tribunal, shall not be deemed final and conclusive until the administrative law judge shall have rendered a determination on the remaining matters and issues" (20 NYCRR 3000.5[f]).

This regulation reflects a policy of the Tax Appeals Tribunal to forego a review of a determination rendered by an Administrative Law Judge until a determination addressing all issues raised in the petition has been rendered. This rule "represents the policy decision that our system will work most efficiently under a general rule that cases stay at the Administrative Law Judge level until they are finally and completely resolved by the Administrative Law Judge and then move on for our review in one complete unit" (Matter of Wachsman, Tax Appeals Tribunal, December 16, 1993). This policy insures that all matters before the Division of Tax Appeals will be handled as expeditiously as possible without delay from appeals of interlocutory orders.

In support of their motion, petitioners assert that this Tribunal should review their exception to the Administrative Law Judge's order at this time in order to maintain the perception of impartiality and fairness that has been accorded to the Division of Tax Appeals. Petitioners' arguments attempt to equate the denial of reviewing their exception until after a hearing is held to a determination rendered with a lack of impartiality on our part. We fail, however, to see any correlation between our impartiality and holding petitioners' exception in abeyance pending a final determination.

Petitioners also contend that the similarity of the wording contained in the Administrative Law Judge's order denying their motion for a default determination and another order authored by the same Administrative Law Judge (Matter of Fasolino, Division of Tax Appeals, November 9, 1995) suggests a lack of consideration by the Administrative Law Judge of the issues presented. Whatever the merit of this assertion may be, it is not cause for us to deviate from our stated policy of reviewing actions of the Administrative Law Judge only after all issues before the Administrative Law Judge are finally and completely decided.

Lastly, petitioners assert that conflicting orders issued by the Division of Tax Appeals lead to uncertainties in the law. Petitioners, however, do not explain how this would justify an immediate review of an interlocutory order in the face of an established policy which forestalls review of an Administrative Law Judge action until the Administrative Law Judge has dealt with all matters and rendered a final determination. In sum, petitioners have not proffered any persuasive reasons which would justify a deviation from our regulation.

Accordingly, it is ORDERED, ADJUDGED and DECREED that petitioners' motion is denied.

DATED: Troy, New York
February 6, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner