

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :

of :

**IRWIN AND MARGERY GAFFIN** :

ORDER  
DTA NO. 816778

for Redetermination of Deficiencies or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Years 1993, 1994 and 1995. :

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Petitioners Irwin and Margery Gaffin, 172 Acorn Hill Road, P.O. Box 1355, Olivebridge, New York 12461, filed a motion for a rehearing with respect to the determination of the Presiding Officer issued on February 3, 2000. Petitioners appeared by William F. Berardi, CPA. The Division of Taxation appeared by Barbara G. Billet, Esq. (Margaret T. Neri, Esq., of counsel).

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

***ISSUE***

Whether petitioners' motion for a rehearing based upon the alleged misconduct of the Presiding Officer should be granted.

***FINDINGS OF FACT***

We find the following facts.

This matter was the subject of a small claims hearing pursuant to Tax Law § 2012. At issue therein was whether the investment tax credits claimed by petitioners on their 1993, 1994

and 1995 New York State personal income tax returns were properly allowable and whether the Division of Taxation (hereinafter the “Division”) was barred from disallowing said claimed credits on the basis that the statute of limitations on assessments had expired.

A hearing was conducted on November 9, 1999 by Presiding Officer Allen Caplowaith. Petitioner appeared at the hearing by William F. Berardi, CPA. The Division appeared by Terrence M. Boyle, Esq. (Stanley Szozda). Neither party elected to reserve time to file a brief.

On February 3, 2000, the Presiding Officer issued a determination denying the petition. On February 26, 2000, petitioners sent a letter to the Presiding Officer. Such letter informed the Presiding Officer of what petitioners believed were incorrect findings of fact and conclusions of law reached by the Presiding Officer and petitioners requested that the Presiding Officer, in effect, review the letter and issue an amended determination.

In response, Assistant Chief Administrative Law Judge Daniel J. Ranalli wrote a letter dated March 3, 2000 advising petitioners that pursuant to Tax Law § 2012, a small claims matter is conclusive on all parties and that petitioners were not entitled to any further administrative review in the absence of an allegation of misconduct by the Presiding Officer during the small claims proceeding.

On March 6, 2000, petitioners’ representative filed this motion with the Tax Appeals Tribunal alleging misconduct on behalf of the Presiding Officer.

### ***ORDER***

In their motion, petitioners allege that the Presiding Officer violated 20 NYCRR 3000.13(f) by failing to provide substantial justice to them. Petitioners claim that since the Presiding Officer found incorrect facts which resulted in erroneous conclusions, in essence, they

were denied substantial justice and they respectfully request that we order a rehearing based upon the proof of misconduct by the Presiding Officer.

We begin by noting that Tax Law § 2012 authorizes small claims hearings at the request of the petitioner. The statute provides that the hearing be informal and that the Presiding Officer has the discretion to accept such evidence and testimony that he deems necessary or desirable for a just and equitable determination. The statute also provides that his determination would be conclusive on all parties and not subject to any review. However, pursuant to 20 NYCRR 3000.13(h)(2), a motion may be made by either party requesting a rehearing upon proof or allegation of misconduct by the Presiding Officer. While an allegation of misconduct has been made by petitioners, a rehearing is not automatically granted (*see, Matter of Keffe*, Tax Appeals Tribunal, January 20, 1994, *confirmed Matter of Keffe v. Tax Appeals Tribunal*, 216 AD2d 692, 627 NYS2d 851, *appeal dismissed* 86 NY2d 884, 635 NYS2d 949). Therefore, the issue before us herein is whether there exists sufficient grounds for us to exercise our discretion to order a rehearing. We conclude that there is not.

Petitioners' allegation of misconduct in this case specifically involves what petitioners believe to be an erroneous finding of fact "4" made by the Presiding Officer in his determination which resulted in his corresponding conclusion of law "D" to be incorrect. As we held in *Matter of Insulpane Indus.* (Tax Appeals Tribunal, July 12, 1990), the *misconduct* which Tax Law § 2012 addresses is the objectionable behavior of a Presiding Officer as opposed to a potential error by that individual in an analysis of the law. Therefore, in the absence of any allegation or proof that the Presiding Officer's conduct was in any way objectionable, we deny petitioners' request for a rehearing of this matter.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the motion for a rehearing of Irwin and Margery Gaffin is denied.

DATED: Troy, New York  
June 22, 2000

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/s/Donald C. DeWitt

Donald C. DeWitt  
President

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/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner

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/s/Joseph W. Pinto, Jr.

Joseph W. Pinto, Jr.  
Commissioner