

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>GERSH AND HELENA KORSINSKY</b>	:	DECISION
	:	DTA NO. 816989
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 1994.	:	

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Petitioners Gersh and Helena Korsinsky, 1236 49<sup>th</sup> Street, # 4B, Brooklyn, New York 11219-3026, filed an exception to the determination of the Administrative Law Judge issued on June 22, 2000. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Kathleen D. Chase, Esq., of counsel).

Neither petitioners nor the Division of Taxation filed briefs on exception. Petitioners' request for oral argument was denied.

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

***ISSUES***

- I. Whether the Notice of Additional Tax Due was barred by the statute of limitations.
- II. Whether the Division of Taxation's assertion of a deficiency based upon Federal audit changes was proper and whether petitioners have shown wherein such audit was in error.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioners, Gersh and Helena Korsinsky, filed a U.S. Individual Income Tax Return for the year 1994. The return included a schedule of interest and dividend income (“Schedule B”) which, on separate lines, reported interest income from Anchor Savings Bank in the amounts of \$336.59 and \$1,871.38, respectively. Petitioners reported total interest income in the amount of \$4,912.20. Petitioners’ return also reported, among other things, dividend income from Invesco Funds Group in the amount of \$168.19. They reported total dividend income in the amount of \$1,101.12.

Petitioners filed a New York State Resident Income Tax Return for the year 1994 which reported the same amount of interest and dividend income as was reported to the Internal Revenue Service (IRS).

The Division of Taxation (“Division”) received an IRS form CP-2000 which stated that there had been changes to the amount of interest and taxable dividends shown on petitioners’ income tax return. Specifically, the form CP-2000 indicated that, according to respective Form 1099 dividend statements, petitioners received additional dividends in the amount of \$1,428.00 from the IMF - Cash Reserves Fund and they received additional dividends in the amount of \$955.00 from the IIF - High Yield Fund resulting in total additional dividend income of \$2,383.00. The form CP-2000 also disclosed that Form 1099 interest statements showed that petitioners received total interest income of \$6,853.00 from five separate bank accounts at

Anchor Savings Bank FSB. Consequently, the IRS determined that petitioners' interest income was \$1,941.00 greater than that reported on their Federal return.

On the basis of the information provided by the IRS, the Division issued a Notice of Additional Tax Due, dated November 4, 1997, which stated that tax was due in the amount of \$363.00 plus interest of \$82.17 for a balance due of \$445.17. The notice explained that it was based on information which New York State received from the IRS and that a bill was issued because the Division had no record that petitioners reported the changes made to their Federal taxable income within 90 days from the final IRS determination. The notice further explained, among other things, that interest and dividend income on their New York return was corrected to include the Federal adjustment.

In response to the notice, petitioners filed a Request for Conciliation Conference, which set forth the following explanation for making a claim:

I have already settled with the Internal Revenue Service (IRS) for the tax year ending December 31, 1994. I settled with the IRS as a matter of convenience because I did not have the time nor the energy to defend my innocence. I did not settle with the IRS on the merits and I still contest their determination. This settlement only applies to the IRS and does not include any other taxing agency including the N.Y.S. Department of Taxation. If the N.Y.S. Department of Taxation would like an examination on those taxes I will gladly cooperate.

However, according to an initial review of my records, I have made all payments to the N.Y.S. Department of Taxation for all previous years. This includes any amounts for the 1994 tax year. Being that we are almost in 1998, the canceled checks are not easily accessible. Regardless, I object to the N.Y.S. Department of Taxation raising doubt about taxes concerning almost 4 years ago. The N.Y.S. Department of Taxation could have requested payment earlier for any assessments. Further, I object any interest or any other charges on the assessed amount.

Petitioners' request to the Bureau of Conciliation and Mediation Services was denied and this proceeding ensued.

An investment summary addressed to petitioners from Invesco Funds Group for the period January 1, 1994 through December 31, 1994 shows the receipt of dividends from the IMF Cash Reserves Fund in the amount of \$1,428.69 and the IIF Short Term Bond Fund in the amount of \$955.50.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge noted in his determination that when the IRS makes a final determination of changes or corrections to the amount of a taxpayer's Federal taxable income, Tax Law former § 659 requires that a taxpayer report such changes or corrections to the Division within 90 days. The taxpayer must either concede the accuracy of such determination or state wherein it is erroneous. The Administrative Law Judge also stated that pursuant to Tax Law former § 681(e)(1), if a taxpayer failed to comply with Tax Law former § 659, the Division could assess a deficiency based upon the Federal change or correction by mailing a Notice of Additional Tax Due to the taxpayer. The deficiency, interest and additions to tax or penalties stated in a Notice of Additional Tax Due are deemed assessed on the date the notice is mailed unless within 30 days after the mailing the taxpayer files a report of the Federal change or correction accompanied by a statement showing wherein the Federal determination and such Notice of Additional Tax Due are erroneous. The Administrative Law Judge noted that the Division may make an assessment at any time if the taxpayer fails to comply with Tax Law former § 659 and is not limited by the usual three-year statute of limitations for the assessment of a deficiency of personal income tax.

The Administrative Law Judge concluded, based on the evidence introduced in this proceeding, that there was a final determination by the IRS which changed petitioners' taxable income for the year 1994. Specifically, more taxable dividends and interest were reported to the IRS on Form 1099s than were reported by petitioners to either the IRS or the Division.

The Administrative Law Judge rejected petitioners' argument that they did not have to report the dividends at issue as income because they were reinvested and included in Schedule D of their Federal income tax return for 1994. The Administrative Law Judge concluded that the dividend income received by petitioners should have been reported as income on their return. Additionally, the Administrative Law Judge found that the additional interest which petitioners failed to report as income should have been included on their returns. Since the dividend and interest income was subject to personal income tax (IRC § 61[a][4]), the Administrative Law Judge held that it was rational for the Division to rely on the Federal audit changes as a basis for issuing the assessment. This placed the burden of proof upon petitioners to show that the Notice of Additional Tax Due was incorrect. The Administrative Law Judge concluded that petitioners failed to meet this burden.

#### ***ARGUMENTS ON EXCEPTION***

On exception, petitioners merely allege their disagreement with the conclusions of the Administrative Law Judge, without specifying how those conclusions may be incorrect. Neither petitioners nor the Division filed a brief on exception.

#### ***OPINION***

Tax Law former § 659 requires a taxpayer to report Federal changes within 90 days after the final determination of such changes and either concede the accuracy of such changes or state

wherein they are erroneous. If such changes are not reported, the Division is statutorily authorized to issue an assessment based on such changes (Tax Law former § 681[e]). A presumption of correctness attaches to a properly issued statutory notice (*see, Matter of Atlantic & Hudson Ltd. Partnership*, Tax Appeals Tribunal, January 30, 1992). Once a Notice of Additional Tax Due was issued to petitioners, they bore the burden of proof to demonstrate that the basis for the assessment was unreasonable or that the amount of tax assessed was incorrect (*Matter of Micheli Contr. Corp. v. New York State Tax Commn.*, 109 AD2d 957, 486 NYS2d 448). However, petitioners introduced no evidence which would support either the unreasonableness of the assessment or the incorrectness of the tax assessed. Therefore, petitioners were deemed to have submitted to the presumption of correctness. As a result, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Gersh and Helena Korsinsky is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Gersh and Helena Korsinsky is denied; and

4. The Notice of Additional Tax Due, dated November 4, 1997, is sustained together with such interest as may be lawfully due.

DATED: Troy, New York  
December 21, 2000

/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