

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>LENORE ROSEN</b>	:	DECISION
	:	DTA NO. 817971
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Taxes Under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Year 1996.	:	

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Petitioner Lenore Rosen, 3267 Durham Place, Holland, Pennsylvania 18966, filed an exception to the determination of the Administrative Law Judge issued on February 15, 2001. Petitioner appeared by Herman Rosen, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Barbara Russo, Esq., of counsel).

Petitioner did not file a brief in support of her exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition to the exception. Petitioner filed a reply brief. Oral argument was not requested.

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

***ISSUE***

Whether the Division is entitled to a summary determination that there is no basis for the cancellation of interest on a tax deficiency due to an alleged delay in assessing the deficiency.

***FINDINGS OF FACT***

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

Petitioner, Lenore Rosen, filed a 1996 New York State and City nonresident and part-year resident personal income tax return on or before April 15, 1997.

The Division of Taxation (“Division”) received information from the Internal Revenue Service (“IRS”) which showed that petitioner had neglected to subtract state and local income taxes paid to New York from her Federal itemized deduction when computing her New York itemized deductions. This information was provided to the Division through the Federal Information Exchange program.

Based on the IRS information, the Division issued to petitioner a Statement of Proposed Audit Adjustment, dated June 18, 1999, where it recomputed petitioner’s 1996 itemized deductions. New York State and City taxes of \$5,178.00 were subtracted from Federal itemized deductions of \$22,627.00, and a New York City modification of \$79.00 was added to the result to calculate New York itemized deductions of \$17,528.00. The decrease in itemized deductions resulted in an increase in New York State and City taxable income and a tax due of \$261.00. In addition to the tax due, the Division calculated interest due in the amount of \$45.10. The statement advised petitioner that if a response to the statement was not received by the Division by July 18, 1999, a notice of deficiency would be issued.

Inasmuch as petitioner did not respond to the statement, the Division issued to petitioner a Notice of Deficiency, dated October 4, 1999, asserting tax due for 1996 of \$261.00 plus interest in the amount of \$51.51.

Petitioner filed a request for a Conciliation Conference, dated October 17, 1999, where she admitted to owing the tax due but objected to the imposition of interest on the tax due. She argued that New York State was delinquent in not correcting her mistake sooner and that she should not be charged interest because the State was slow in acting. She also argued that the tax instructions were not clear. Petitioner stated that she would not be able to attend a hearing or conference since she lives in Pennsylvania.

By letter dated December 13, 1999, the Division denied petitioner's request for cancellation of interest. This letter explains the Division's calculation of tax due in detail. In addition, the letter states:

No penalties have been imposed on this bill. However, interest is due on the unpaid amount from the due date of the return to the date the full amount is paid. Interest is required by section 684(a) of the New York State Tax Law.

Petitioner executed a "Conditional" withdrawal of her request for conciliation conference. In an attachment, petitioner again argued that she should not be subject to payment of interest which she characterized as a penalty. The Division then issued a Conciliation Order, dated June 2, 2000, sustaining the statutory notice.

Petitioner submitted a petition for a hearing on August 11, 2000. Petitioner concedes that she erroneously neglected to subtract state and local taxes from her itemized Federal deductions. However, she argues that the Division had a responsibility to find the error on her return promptly and further states: "NYS is not a credit company which collects penalties and interest by waiting to collect and profit by it. The error should have been corrected and submitted to me in 1997" (original all in capital letters). Petitioner also suggests that a statute of limitations must apply.

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

In her determination, the Administrative Law Judge noted that in order to obtain a summary determination, the moving party must demonstrate by documentary evidence that there is no material issue of fact and that the facts mandate a determination in the moving party's favor. The Administrative Law Judge found that in this proceeding, petitioner did not dispute liability for the amount of tax asserted. Thus, there were no facts in dispute and the issue of whether the Division was correct in assessing interest could be decided as a matter of law.

The Administrative Law Judge noted that Tax Law § 684(a) provides for the imposition of interest on any amount of income tax not paid when due. The Administrative Law Judge also noted that pursuant to Tax Law § 3008, the Commissioner of Taxation and Finance may abate all or part of the interest owed on a final determination of tax due where the deficiency is attributable in whole or in part to an unreasonable error or delay by an employee of the Division.

The Administrative Law Judge found that the interest imposed herein was not the result of error or delay by the Division. The evidence submitted by the Division demonstrated that the Division was not aware of petitioner's error in calculating her New York itemized deductions until it received information from the IRS. The Division notified petitioner of this error on June 18, 1999. This was slightly more than two years after petitioner filed her tax return for 1996 and, as such, was not unreasonable. The Administrative Law Judge, thus, found no ground for abatement of the interest imposed by Tax Law § 684(a). The Administrative Law Judge concluded that the three-year statute of limitations did not prohibit assessment of tax and interest because a Notice of Deficiency was issued to petitioner within three years of the filing of petitioner's 1996 return as required by Tax Law § 683. Finally, the Administrative Law Judge

noted that the Tax Appeals Tribunal distinguished the imposition of interest from a penalty in *Matter of Rizzo* (Tax Appeals Tribunal, May 13, 1993).

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

On exception, petitioner argues that as a matter of fairness, the Division should not assess penalty and interest on the amount of unpaid tax. Petitioner asserts that she made an arithmetic error by not deducting the state and local income taxes she paid to New York from her Federal itemized deduction when she computed her New York itemized deductions. The Division, alleges petitioner, erred in failing to discover this mistake in a timely fashion.

The Division, in opposition, argues that the Administrative Law Judge correctly decided this matter. The Division points out that interest is imposed as a matter of law on the amount of unpaid tax. Further, the Division asserts that interest is not a penalty but merely represents the cost to the taxpayer for the use of funds which belong to the State.

### ***OPINION***

We first note that petitioner mistakenly believes that a penalty as well as interest has been imposed against her. In the Notice of Deficiency issued to petitioner, tax and interest but not penalty were asserted due. Petitioner does not contest liability for the tax. The only matter before us for consideration is whether the Division is entitled to summary determination in its favor that interest is due on the amount of tax owed. In this regard, we find that the Administrative Law Judge correctly determined that there are no facts at issue and that summary determination in favor of the Division is warranted.

Tax Law § 684(a) imposes interest on the amount of any income tax not paid by its due date. As we have held in *Matter of Rizzo* (*supra*), interest is intended “to compensate the State

for its inability to use the funds and to encourage the timely remittance of tax due.” The Administrative Law Judge properly rejected petitioner’s statute of limitations defense and also correctly determined that there were no facts in the record which supported the argument that the accrued interest was the result of delay by the Division. Petitioner has provided no basis in her exception to modify the determination of the Administrative Law Judge in any respect. As a result, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Lenore Rosen is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Lenore Rosen is denied; and
4. The Notice of Deficiency issued on October 4, 1999 is sustained.

DATED: Troy, New York  
August 30, 2001

/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