

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

R.J. AND I.E. GABLER :

ORDER
DTA NO. 818542

for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Years 1997, 1998 and 1999. :

Petitioners R.J. and I.E. Gabler, 21 Arthursburg Road, LaGrangeville, New York 12540, filed a motion for a rehearing with respect to the determination of the Presiding Officer issued on May 9, 2002. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Barbara J. Russo, 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 taxable amount of petitioners' IRA distribution and pension and annuity income which was included in Federal adjusted gross income could properly be

considered as interest income on obligations of the United States and its possessions and, as such, excluded from New York adjusted gross income pursuant to Tax Law § 612(c)(1).

A hearing was conducted on December 14, 2001 by Presiding Officer James Hoefer. Petitioners appeared at the hearing *pro se*. The Division of Taxation (hereinafter “Division”) appeared by Barbara G. Billet, Esq. (Susan Parker, Advocate). Each party elected to file a post-hearing brief.

On May 9, 2002, the Presiding Officer issued a determination denying the petition and sustaining the Notice of Disallowance issued to petitioners for tax years 1997, 1998 and 1999. On June 5, 2002, petitioners filed a motion with the Tax Appeals Tribunal pursuant to 20 NYCRR 3000.13(h)(2) requesting a rehearing on the basis of misconduct by the Presiding Officer.

In support of their motion, petitioners assert that in his determination, the Presiding Officer made material misstatements and omissions of crucial facts which led to erroneous conclusions of law. Petitioners argue that these actions constitute “misconduct” by the Presiding Officer as that term is defined in Webster’s Third International Dictionary to include “mismanagement, especially of governmental responsibility” (Petitioners’ brief in support, p. 6).

The Division, in opposition to petitioners’ motion, asserts that the “misconduct” of a Presiding Officer addressed by Tax Law § 2012 and 20 NYCRR 3000.13(h)(2) concerns objectionable behavior by an individual and not a potential error by such individual in an analysis of law. As petitioners have failed to state any basis for relief in their motion, the Division moves that their request should be denied.

ORDER

We begin by noting that Tax Law § 2012 authorizes small claims hearings at the request of the petitioner. The statute provides that the hearing shall 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 the Presiding Officer's determination will 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 Keeffe*, Tax Appeals Tribunal, January 20, 1994, *confirmed Matter of Keeffe 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' allegations of misconduct in this case specifically involve what petitioners believe to be material misstatements and omissions of crucial facts by the Presiding Officer which led to his alleged erroneous conclusions of law. Petitioners specifically state in their motion brief, however, that "[t]axpayers wish to make very clear they do not impugn the honesty of the hearing officer in the slightest, nor his qualification for the position he holds, nor his conduct at the hearing on this matter." (Petitioners' brief in support, p. 6). 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 (*see, Matter of Gaffin*, Tax Appeals Tribunal, June 22, 2000).

Accordingly, it is ORDERED, ADJUDGED and DECREED that the motion for a rehearing of R.J. and I.E. Gabler is denied.

DATED: Troy, New York
September 26, 2002

/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