

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ALLAN CHAPIN AND JANET JOHNSON	:	DECISION
	:	DTA NO. 819250
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	:	
1998.	:	

Petitioners Allan Chapin and Janet Johnson, c/o Compass Partners, 599 Lexington Avenue, New York, New York 10022, filed an exception to the determination of the Administrative Law Judge issued on September 23, 2004. Petitioner Allan Chapin appeared *pro se* and on behalf of his wife, petitioner Janet Johnson. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Peter B. Ostwald, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a brief in opposition and petitioners 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 of Taxation properly determined and assessed a deficiency against petitioners for underpayment of their 1998 personal income tax liability together with penalties

for late filing of their return, late payment of tax and failure to timely pay estimated tax for such year.

FINDINGS OF FACT

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

Petitioners, Allan Chapin and Janet Johnson, husband and wife, filed a New York State Resident Income Tax Return (Form IT-201) for the year 1998. This return was received by the Division of Taxation ("Division") on November 15, 1999. On their 1998 return, petitioners reported New York taxable income of \$2,384,548.00, resulting in New York State and New York City personal income taxes due thereon (before credits) in the aggregate amount of \$269,391.00, consisting of the respective amounts of \$163,342.00 (New York State) and \$106,049.00 (New York City). Petitioners reduced their New York State liability from \$163,342.00 to \$151,101.00, based on a claimed \$12,241.00 resident credit for tax paid to the State of California. Petitioners reduced their New York City liability from \$106,049.00 to \$91,620.00, based on a claimed \$14,429.00 unincorporated business tax credit. Thus, petitioners reported a total New York State and New York City personal income tax liability of \$242,721.00, at line "56" of their return, for the year 1998.

On their 1998 return, petitioners' \$242,721.00 total liability was reduced by a City of New York school tax credit of \$12.00 and by a claimed estimated tax payment of \$200,000.00, thus leaving \$42,709.00 as the amount of tax they owed for 1998. Petitioners remitted such amount (\$42,709.00) on November 15, 1999 with their return.

The Division reviewed petitioners' 1998 return, including its records of estimated tax payments and other payments made by petitioners for 1998. As a result of this review, the

Division denied petitioners' claimed resident credit (\$12,241.00) and claimed unincorporated business tax credit (\$14,429.00), the result of which was to increase petitioners' 1998 total liability to \$269,391.00. The Division further concluded that petitioners' only allowable credits and payments for 1998 totaled \$202,721.00, consisting of the New York City school tax credit of \$12.00, an estimated tax payment in the amount of \$160,000.00, and the \$42,709.00 payment which accompanied petitioners' return. By comparing petitioners' total liability (\$269,391.00) to their total credits and payments (\$202,721.00), the Division determined that petitioners had underpaid their tax liability for 1998 by \$66,670.00.

On July 7, 2000, the Division issued to petitioners a Notice and Demand for Payment of Tax Due for the year 1998, assessing tax due in the amount of \$66,670.00, as set forth above, plus penalties and interest. The notice provides that "penalty and/or interest is due for failure to file or pay tax on or before the due date." Although not specifically listed, the penalties would appear to be those imposed for failure to timely file a return (Tax Law § 685[a][1]), failure to timely pay tax due (Tax Law § 685[a][2]), and failure to timely pay estimated income tax (Tax Law § 685[c]).

In response to petitioners' challenge to the Notice and Demand, the Division's auditor reviewed the Division's records concerning petitioners' income tax filings and payments for the year in issue, 1998, as well as for the preceding years 1997 and 1996, and the subsequent year 1999. Such review (and the changes occasioned thereby) is presented in summary fashion hereinafter:¹

¹ The amounts shown reflect petitioners' tax liability and their payments for each year, and do not include or reflect any calculations or payments with respect to interest or penalties.

1996

Liability per return	\$261,495.00
Tax withheld	(23,547.00)
Paid with return	(<u>28,495.00</u>)
Balance due	<u>\$209,453.00</u>

The auditor eliminated the \$209,453.00 balance due for 1996 by application of the following payment amounts totaling \$209,453.00:

\$49,453.00– a payment by check, verified by Deposit Serial Number (“DSN”) S7258330 as received on April 18, 1997, representing the amount originally allowed by the Division as estimated tax paid for 1996, and

\$160,000.00– a payment by check, verified by DSN S1216323 as received on April 17, 1997, originally appearing as an estimated tax payment against petitioners’ liability for 1997.

1997

Liability per return	\$239,467.00
Payments	(<u>0.00</u>)
Balance Due	<u>\$239,467.00</u>

By applying the \$160,000.00 amount, originally appearing as an estimated tax payment in petitioners’ 1997 account (see above), as a payment against (and eliminating) petitioners’ balance due for 1996, the full balance due for 1997 appears as unsatisfied in the auditor’s calculations for 1997. However, the auditor’s review recognized two payments, totaling \$80,000.00, remaining to be applied against petitioners’ 1997 balance due, as follows:

\$60,000.00– a payment by check, verified by DSN S2136244 as received on September 19, 1997, and

\$20,000.00– a payment by check, verified by DSN S7308462 as received on April 28, 1998.

Application of these amounts against petitioners' \$239,467.00 balance due for 1997 reduced such balance due to \$159,467.00.

1998

Liability per return	\$242,721.00
Tax withheld	(0.00)
Paid with return	(42,709.00)
NYC school tax credit	(<u>12.00</u>)
Balance Due	<u>\$200,000.00</u>

The auditor reduced the \$200,000.00 balance due by \$160,000.00, consisting of one payment by check, verified by DSN S1398929 as received on April 20, 1998, and described as "the only payment made for estimated tax purposes for 1998." Thus, the Division asserts, after this "estimated payment" reduction, an outstanding assessed tax liability of \$40,000.00, plus penalties and interest, remains for 1998, the only year in question in this proceeding.²

1999

The auditor's review indicated that petitioners had not filed a return for 1999, but had made one payment by check in the amount of \$200,000.00, verified by DSN S1399928 as received on April 21, 1999, and described by the auditor as "unmatched." This payment will be further described hereinafter.

Accompanying the petition in this matter and included as part of the record is a copy of a check, numbered 3688, drawn on the account of petitioner Allan Chapin, in the amount of \$200,000.00. This check, dated December 31, 1998, is payable to "NYS Income Tax" and, in its memo section, states "98 Est." The face of this check reflects the stamped DSN "S1399928," consistent with the unmatched payment listed above. The reverse side of this check, also

² The auditor concluded that the resident credit and the unincorporated business tax credit denied by the Division in its initial review of petitioners' 1998 return (*see*, above) were proper and allowable. The impact of this conclusion was to accept the \$242,721.00 liability shown on petitioners' return, as filed, as the correct amount and, as a consequence, to reduce the tax due as shown on the Notice and Demand from \$66,670.00 to \$40,000.00, plus penalties and interest.

submitted by petitioners as part of the petition in this matter, contains several sets of stamped numbers, the significance of which is not elaborated upon in the record. However, the stamped numbers “042299” and “04221999” appear on such reverse side, followed by the stamped endorsement “For Deposit Only/Without Prejudice Comptroller State of NY,” thus presumably indicating a deposit date of April 22, 1999, i.e., one day after the receipt date of April 21, 1999. Finally, page “8” of the Division’s audit report in this matter contains a photocopy of the face of the \$200,000.00 check, together with a photocopy of an accompanying Estimated Income Tax Payment Voucher (Form IT-2105-MN) for 1998. This voucher lists petitioner Allan Chapin’s name, address and social security number, indicates a “Total Payment” of \$200,000.00, and is addressed to “NYS Estimated Income Tax, P.O. Box 1195, Albany, NY 12201.”³

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that his jurisdiction in this case was only for the year 1998 which is the year covered by the Notice and Demand at issue. The Administrative Law Judge stated that in order to determine whether the Notice and Demand was incorrect, it was necessary for him to review the auditor’s report which included petitioners’ payment history of estimated tax payments over preceding years and the application of such payments against prior years where there were outstanding tax balances.

After a thorough review of checks received and deposited against the accounts of petitioners, the Administrative Law Judge concluded that the check in the amount of \$200,000.00 received by the Division on April 21, 1999 must be credited against petitioners’ liability for the 1998 tax year. The Administrative Law Judge noted that the check indicated on

³ An additional line of handwriting follows the address, but is partially obscured and is illegible.

its face that it was for “98 Est.” and the check was submitted along with Form IT-2105-MN, the Estimated Tax Payment Voucher, for 1998. Thus, the Administrative Law Judge found that petitioners established their intent that the \$200,000.00 check be applied against their liability for 1998.

This determination necessarily results in the tax liability for 1998 being satisfied, however, remaining due on the account are penalties with respect to late filing, late payment and failure to timely pay estimated tax for 1998. As noted, petitioners’ tax return for 1998 was not filed until November 15, 1999 and, as such, the Administrative Law Judge sustained the penalties imposed with interest due thereon.

ARGUMENTS ON EXCEPTION

In their exception, petitioners assert that the Administrative Law Judge erred in considering any years other than 1998 when making a determination in this matter. Petitioners contend that if the years from 1996 through 2000 were at issue, then they should have received an opportunity to address these years at the administrative level.

Moreover, petitioners continue to argue that the payments made by them up to and including the check deposited with the Division on April 21, 1999 is sufficient enough to cover any outstanding liabilities for previous years and that there exists an overpayment due them for 1998.

The Division argues that the Administrative Law Judge’s determination was correct and should be sustained. The Division points out that it can make no further adjustments with respect to petitioners’ outstanding tax liabilities until it has received tax returns for subsequent years noting at a minimum, the years 1999-2001.

OPINION

Pursuant to Tax Law § 651, a New York personal income tax return shall be made and filed on or before April 15th following the close of the taxable year. Tax Law § 657 allows a taxpayer to obtain extensions of the time for filing, the maximum period for which shall not exceed six months. Petitioners' return for the year 1998 was received by the Division on November 15, 1999 which is clearly outside the time frame set by law and, thus, such return is late filed.

Petitioners continue to contend that their payment received by the Division on April 20, 1998 in the amount of \$160,000.00 was, in fact, a payment for the year 1997 and, as such, should be reflected as a payment against their 1997 liability which results, in petitioners' estimation, as an overpayment in their favor for the year 1998.

As fully discussed by the Administrative Law Judge, we have held that a taxpayer does have the right to provide information directing or specifying how payments are to be applied (*see, Matter of Myer*, Tax Appeals Tribunal, May 17, 1990). However, petitioners have failed to establish that when they made their payment of \$160,000.00 in April of 1998 that such payment was to be applied to another year. The payment was received in the year 1998 and the Division was not required to apply the payment to any other year than 1998 in the absence of any directive from the taxpayer. Accordingly, we refuse to apply such payment to any other tax year.

The record clearly reflects that petitioners herein failed to timely file their 1998 tax return, late paid their tax due and failed to pay their estimated tax payments on time as set forth by statute. Petitioners were afforded several opportunities to submit further information in an effort

to demonstrate that any further adjustment should be made in this case. Clearly, petitioners have failed to sustain their burden of proof to establish that the Notice and Demand was incorrect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Allan Chapin and Janet Johnson is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Allan Chapin and Janet Johnson is granted to the extent that the Division of Taxation is to recalculate its July 7, 2000 Notice and Demand so as to reflect application of petitioners' April 21, 1999 payment of \$200,000.00 against petitioners' personal income tax liability for 1998, but is otherwise denied; and
4. The Notice and Demand as modified in accordance with paragraph "3" above, including any penalties for late filing, late payment and failure to timely pay estimated tax, is sustained.

DATED: Troy, New York
November 23, 2005

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

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

/s/Robert J. McDermott
Robert J. McDermott
Commissioner