

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

| | | |
|--|---|----------------|
| In the Matter of the Petition | : | |
| of | : | |
| MICHAEL A. GOLDSTEIN AND | : | |
| JANICE L. GOLDSTEIN | : | DECISION |
| | : | DTA NO. 822632 |
| 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 Years 1994,1995, 1996, 1997 | : | |
| and 2004. | : | |

Petitioners, Michael A. and Janice L. Goldstein filed an exception to the determination of the Administrative Law Judge issued on August 19, 2010. Petitioners appeared by Samson Management, LLC (Ray W. Cruz, Esq., CPA). The Division of Taxation appeared by Mark Volk, Esq. (Robert Tompkins, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioners filed a letter brief in lieu of a formal reply brief. Oral argument, at petitioners' request, was held on March 23, 2011 in New York, New York.

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

ISSUES

I. Whether interest on petitioners' refund for 1994 should accrue from the date of the amended return claiming the refund or the date the original return was filed.

II. Whether the refund for 1994 is available for application to the 1995, 1996 and 1997 deficiencies at the time of the due dates for the 1995, 1996 and 1997 original returns.

III. Whether Tax Law § 606(f)(3)(B) precludes payment of interest on refund claims for the special mortgage recording tax credit.

FINDINGS OF FACT

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

On or about October 3, 2006, Michael A. and Janice L. Goldstein (petitioners) executed an IRS form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, thereby accepting certain deficiencies, overstatements of tax and additions to tax. For the year ended December 31, 1994, there was an overassessment of \$103,117.00. For the year ended December 31, 1995, there was a deficiency of \$265,784.00. For the year ended December 31, 1996, there was no change. For the year ended December 31, 1997, there was a deficiency of \$359,377.00.

As a result of the final federal changes, petitioners, on or about January 2, 2007, timely filed amended New York State resident income tax returns that claimed a refund in the amount of \$39,067.00 for the year 1994 and reported amounts owed for 1995, 1996 and 1997 in the amounts of \$37,055.00, \$34,099.00 and \$104,306.00, respectively.

On or about May 21, 2007, the Division of Taxation (Division) issued a Notice and Demand for Payment of Tax Due for the year 1995, seeking tax due in the sum of \$37,055.00 and interest of \$42,798.16. The notice stated that the amount due was based on petitioners' amended return.

Petitioners responded to the notice with a letter, dated May 29, 2007, in which they

reminded the Division that petitioners had made a payment of \$32,087.00 for the net tax due for the years 1994, 1995 and 1996. In addition, petitioners requested an explanation of why the interest assessment on the notice, \$42,798.16, was so much higher than the interest of only \$4,095.60 on petitioners' refund claims for the years 1995, 1996 and 1997.

The Division approved the refund of \$39,067.00 for the year 1994 with interest of \$2,218.16, which accrued only from the date that the amended return was filed in January 2007. The total amount of \$41,285.16 was applied to petitioners' deficiency for the year 1995.

The additional tax due for the year 1995, as reported on the amended income tax return filed on January 2, 2007, was \$37,055.00 plus the interest that the Division added, accrued from the due date of the original return until payment was made. The Division applied the entire 1994 refund plus interest earned due to petitioner, \$41,285.16, to the 1995 assessment on January 3, 2007, stopping the interest from accruing from that date. In addition, a refund claimed on an amended return for 2004, unrelated to the federal audit adjustments referenced in the Finding of Fact above, resulting from a Special Mortgage Recording Tax Credit (SMRTC) of \$37,858.89, was applied against the 1995 assessment on August 9, 2007. A partial refund for 2004 in the sum of \$54,230.00 was approved on August 9, 2007 with the submission of substantiating documentation.

Petitioners' amended return for 1996 was filed on January 2, 2007, setting forth additional tax due of \$34,099.00. The Division had accrued interest from the due date of the original return until the approved payment date. The \$32,087.00 payment was received with the amended return on January 2, 2007. In addition, \$16,371.11 of the \$54,230.00 SMRTC refund from 2004 was applied as a payment on August 9, 2007. An additional \$7,190.69, derived from an additional SMRTC refund for 2004 was applied, when approved, on January 31, 2008. Two

additional payments were applied to the 1996 assessment, as well: \$411.81 from a 2001 refund was applied on June 26, 2008 and \$14,627.31 was paid by petitioners on November 12, 2008.

Petitioners' 1997 amended return stated an additional tax due of \$104,306.00. Interest was accrued by the Division on the 1997 deficiency from the due date of the original return until payment. Petitioner paid the total additional tax due with the amended return on January 2, 2007. In addition to the tax paid by petitioners, there was a payment made on January 31, 2008 in the sum of \$13,191.31 from the application of the 2004 refund of the SMRTC; a June 5, 2008 payment of \$1,276.71 from the application of a 2002 refund; and a payment of \$72,091.21 on June 26, 2008 from a 1998 refund of \$25,108.75, a 1999 refund of \$3,290.59 and a 2000 refund of \$43,691.87.

The amended income tax return filed by petitioners for the year 2004 on March 9, 2007, claimed the SMRTC and requested a refund of \$74,612.00. Although documentary support for the refund was requested by letter, dated June 6, 2007, petitioners were able to provide justification for only \$54,230.00 of the \$74,612.00 refund claimed. This refund was approved on August 9, 2007. The remaining \$20,382.00 was approved on January 31, 2008 after petitioners submitted additional documentation. No interest accrued on the refund based on the SMRTC.

Petitioners filed refund claims for the years 1994, 1995, 1996 and 2004 on May 15, 2008, in which they claimed that additional interest was owed for the 1994 and 2004 refunds and that they were overcharged on interest accrued for the years 1995, 1996 and 1997.

The Division took no action on the claims in writing until a formal Notice of Disallowance was issued on July 17, 2009. That notice stated, in pertinent part, as follows:

We have reviewed all the refund claims for the above noted tax years [1994-2002, 2004] and we have determined that the proper interest rates and dates were applied.

Under section 688 of the NYS tax law, for tax years 1994 thru 1998, interest on an overpayment of tax was payable from the date the amended return was filed to the date the refund was issued. No interest was allowed prior to the filing date of the amended return.

Beginning in tax year 1999, interest on an overpayment of tax is payable from the due date (if the original return was timely, considering extensions), or the filing date (if the original return was late, considering extensions) of the original return, to the date the refund is issued.

However, if the refund is issued within 45 days after the amended return is filed, no interest is due beyond the filing date of the amended return.

For tax year 2004, the refund was a Special Mortgage Recording Tax credit. Per section 606(f)(B) of the NYS tax law, no interest shall be paid on such overpayment.

The Division submitted the affidavit of Mary C. Murphy, Tax Technician II, dated October 19, 2009, which explained the interest calculations for the years in issue.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge held that former Tax Law § 688(a)(3) and Tax Law § 697 did not entitle petitioners to interest on their overpayment of taxes for any day before the date on which the amended return or claim was filed. The Administrative Law Judge also found that petitioner would be entitled to their sought relief had the taxable years at issue not been prior to 1999. However, the amendments made to the Tax Law by Chapter 377 of the Laws of 1999 were only made prospectively for tax years beginning January 1, 1999, and, as such, the statute does not permit refunds from the original filing date. The Administrative Law Judge found that petitioner was not entitled to interest on refund claims for the special mortgage recording tax because Tax Law § 606(f)(3)(B) explicitly excludes the payments of such interest. Accordingly, the Administrative Law Judge denied the petition and sustained the Notice of Disallowance in full.

ARGUMENTS ON EXCEPTION

On exception, petitioners seek reversal based upon the same arguments as those presented before the Administrative Law Judge. Petitioners argue that the Division should have paid interest on the overpayments of tax made by petitioners from the date of the filing of the original returns for the years at issue, not from the date of the filing of the amended returns that were filed as a result of the federal changes. As a result of the federal changes and the reduction of taxable income of the trusts, the taxable income of the trust's beneficiaries increased. These beneficiaries were required to pay interest from the dates of the filing of their original returns. Petitioners claim that an inequity results because the trusts did not receive interest from the dates of the filing of the original returns. Petitioners claim that, while the Tax Law requires petitioners to report the federal changes to the Division, nothing in the Tax Law requires the filing of an amended return, and, therefore, Tax Law § 688(a)(former [3]) is not applicable in this proceeding.

Petitioners argue, in the alternative, that if Tax Law § 688(a) applies herein and an amended return is filed, then that statute is in conflict with Tax Law § 687(c) and § 688(g). Petitioners state that an inequity results in the Division's rates of interest because the rate of interest charged to taxpayers who have underpaid taxes is greater than the rate paid to taxpayers who have overpaid their taxes. Petitioners claim that the Division did not properly refund overpayments of New York City tax made by petitioners.

The Division argues that the Administrative Law Judge properly sustained the Notices of Disallowance. It argues that there is no ambiguity in Tax Law § 688 and that petitioners' arguments are ineffectual.

OPINION

We affirm the determination of the Administrative Law Judge and note that the first issue to be addressed is legally indistinguishable from that in *Matter of Michael A. Goldstein A No. 1 Trust* (Tax Appeals Tribunal, June 29, 2011).

The present matter involves federal modifications for the tax years 1994, 1995, 1996, and 1997. During those years, Tax Law § 688(a)(former [3]) provided as follows:

Late and amended returns and claims for credit or refund. Notwithstanding the provisions of paragraph one or two of this subsection, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), or claimed on an amended return of tax or claimed on a claim for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

In addition, during the years at issue, Tax Law § 688(former [c]) stated:

Income tax refund within forty-five days of claim for overpayment.--If any overpayment of tax imposed by this article is credited or refunded within forty-five days after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within forty-five days after such return was filed, whichever is later, or within forty-five days after an amended return was filed claiming such overpayment or within forty-five days after a claim for credit or refund was filed on which such overpayment was claimed, or within six months after a demand is filed pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, no interest shall be allowed under this section on any such overpayment. For purposes of this subsection, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year shall be considered as filed on such last day.

The Legislature amended the above provisions of the Tax Law, beginning January 1, 1999, in Chapter 377 of the Laws of 1999 by deleting all references to “amended returns” and “claims for credit or refund” in Tax Law § 688(a)(3). Accordingly, Tax Law § 688(a)(3), which remains in force, provides as follows:

Late returns. Notwithstanding the provisions of paragraph one or two of this

subsection, in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

In addition, Tax Law § 688(c) was also amended by chapter 377 of the Laws of 1999 to read as follows:

Income tax refund within forty-five days of claim for overpayment.--If any overpayment of tax imposed by this article is credited or refunded within forty-five days after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within forty-five days after such return was filed, whichever is later, or within six months after a demand is filed pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter, no interest shall be allowed under this section on any such overpayment. In regard to an amended return claiming such overpayment or a claim for credit or refund on which such overpayment was claimed, if such overpayment is refunded within forty-five days of filing such return or such claim, no interest shall be allowed from the date such return or such claim is filed until the day the refund is made. For purposes of this subsection, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year shall be considered as filed on such last day.

The Memorandum in Support, New York State Senate, for chapter 377 of the Laws of 1999, stated its purpose as follows: "This bill provides that the state shall pay any interest earned on a tax overpayment from the date an original tax return was filed, rather than the date the same tax return was amended." The Memorandum in Support set forth the following as the justification for chapter 377:

Currently, the tax law provides that no interest shall be paid on any tax overpayment for any date before a late or amended tax return is filed. An amended tax return is not the same as a tax return filed late and this difference should be realized in regard to the payment of interest on any tax overpayment. Responsible taxpayers filing on time, but for whatever reason need to amend their original tax return, should not be deprived of the interest earned on their overpayment from the date the original tax return was filed to the date it was amended. This legislation, if enacted, would change the current law by authorizing the payment of all interest accrued on a tax overpayment from the date the original tax return was filed, and in so doing, give taxpayers filing an amended

return the full benefit of all the interest earned on their tax overpayment.

The Division's own Technical Services Bureau Memorandum, TSB-M-99(7)I, issued November 19, 1999, explained these amendments as follows:

For tax years beginning on or after January 1, 1999, section 688(a)(3) of the Tax Law is amended relating to the payment of interest on an overpayment of personal income tax as a result of the filing of an amended return or a claim for credit or refund. Under the new law, interest on an overpayment of tax claimed on an amended return or a claim for credit or refund will be payable from the due date of the original return to the date the refund is issued. However, section 688(c) of the Tax Law is also amended to provide that if the Department refunds the overpayment within forty-five days after the amended return or a claim for credit or refund is filed, no additional interest will be paid from the date the amended return or a claim for credit or refund is filed until the date the refund is issued.

We agree with the Administrative Law Judge that, if the taxable years at issue were not years prior to 1999, petitioners would be entitled to interest on the 1994 overpayment of tax from the date the original return was filed. However, the amendments made to the Tax Law by chapter 377 of the Laws of 1999 were made only prospectively, i.e., for tax years beginning January 1, 1999. There is no ambiguity with respect to the effective date of the amendments made to Tax Law § 688(a)(3) and (c).

For the tax year 1994, Tax Law § 688(a)(former [3]) provided that in the case of an overpayment claimed on an amended return or on a claim for credit or refund that is filed after the last date prescribed for filing the return for the years at issue (petitioners filed an amended return on or about January 2, 2007 for the year 1994, a date that was within 90 days of the final determination of the federal change as required by Tax Law § 659), no interest would be allowed or paid for any day before the date on which the amended return or claim was filed.

Petitioners raise the argument that Tax Law § 687(c) states that interest is payable for Federal Changes when filed within the 90-day period of the report. Therefore, petitioners

contend that since they filed within the 90-day period, they are entitled to interest from the due date of the original return.

Tax Law § 687(c) provides, in relevant part, that:

If the report or amended return required by section six hundred fifty-nine [this section requires that a taxpayer report a federal change to the Division within 90 days of the final determination of such federal change] is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal change or correction.

Tax Law § 687(c) is only relevant insofar as it provides the requisite authority to pay interest to taxpayers from the date of reporting a federal change to the Division through either a report or amended return. We note that the statute places limitations on this authority such that failure to report within 90 days of a federal change results in no interest being payable on the claim, credit or refund of the overpayment. Tax Law § 687(c) makes no reference to the date from which interest is payable. Accordingly, we reject petitioners' argument that Tax Law § 687(c) requires a ruling in their favor.

We also reject petitioners' equity arguments to grant interest from the due date of the original return. In essence, petitioners ask that we disregard the applicable statute for the period at issue, *to wit*, Tax Law § 688(a)(former [3]), and grant them interest from the filing of the original return, as provided in the current Tax Law § 688(a)(3). Petitioners assert that the failure of the Division to refund interest from the date of filing of the original returns (while requiring the trust beneficiaries to pay interest on their additional taxable income resulting from the federal changes from the date of filing of the original returns for the years at issue) is inequitable or unjust. The Legislature agreed with petitioners and amended the relevant sections of the Tax Law to correct this inequity, but only prospectively. As such, this Tribunal cannot grant the

requested relief.

The rules of statutory construction forbid retroactive application of amendments to a statute unless the language of the statute clearly indicates that the amendment should be applied retroactively. In the present matter, section 3 of chapter 377 of the Laws of 1999, which amended Tax Law § 688(a)(3) and (c), states: “This act shall take effect immediately and shall apply to taxable years beginning January 1, 1999.” Accordingly, we find that the Administrative Law Judge properly denied petitioners’ claim for additional interest for the overpayment made for the 1994 tax year because petitioners are entitled to interest from the filing of the amended return, not the original return.

Petitioners also attempt to claim a violation of the United States and New York State Constitutions without citing specific provisions that have been violated by the applicable Tax Law statutes. The essence of petitioners’ constitutional argument is that it is a violation of U.S. Constitution, N.Y.S. Constitution and/or Civil Rights Acts of State of New York when the Division assesses a taxpayer from the original due date on federal changes while only allowing a taxpayer on the reciprocal federal Change adjustment to receive interest from a date that the federal changes were filed and at a lower interest rate.

It is well settled that this agency lacks jurisdiction to consider claims alleging that a statute is unconstitutional on its face (*see Matter of A&A Serv. Sta.*, Tax Appeals Tribunal, October 15, 2009; *Matter of RAF Gen. Partnership*, Tax Appeals Tribunal, November 9, 1995), and, at the administrative level, statutes are presumed to be constitutional (*see Matter of Lunding*, 218 AD2d 268 [1996], *revd* 89 NY2d 283 [1996], *cert granted* 520 US 1227 [1997], *revd* 522 US 287 [1998]). However, the Tax Appeals Tribunal may determine whether tax law statutes are constitutional as applied (*Matter of Eisenstein*, Tax Appeals Tribunal, March 27,

2003, *citing Matter of David Hazan*, Tax Appeals Tribunal, April 21, 1988, *confirmed* 152 AD2d 765 [1989], *affd* 75 NY2d 989 [1990]).

We reject the argument that the statute was unconstitutional as applied because petitioners have offered no evidence that they were treated any differently than any other similarly situated taxpayers. We note that, “[t]axing statutes, like other social and economic legislation that neither classify on the basis of a suspect class nor impair a fundamental right, must be upheld if the challenged classification is rationally related to achievement of a legitimate State purpose” (*Trump v. Chu*, 65 NY2d 20, 25 [1985], *appeal dismissed* 474 US 915 [1985]). “The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it” (*Madden v. Kentucky*, 309 US 83, 88 [1940]). Petitioners have failed to meet their burden in this regard and we find that the Administrative Law Judge properly rejected their constitutional arguments.

We also reject petitioners’ equity argument based upon the difference in the rate of interest charged to taxpayers who have underpaid their taxes and the rate of interest paid to taxpayers who are due refunds because of overpayments. The Tax Appeals Tribunal is an adjudicative body with limited jurisdiction and power granted by statute (*see generally* Tax Law § 2000). Unlike the Article III courts or small claims proceedings where “a just and equitable determination is authorized” (*see* Tax Law § 2012), this Tribunal lacks equity jurisdiction (*see* Tax Law § 2010).

We further note that Tax Law § 697(j) gives the Commissioner of Taxation and Finance the authority to set the overpayment and underpayment rates of interest to be paid pursuant to Tax Law §§ 684, 685 and 688. Specifically, Tax Law § 697(j)(2)(A) and (former [B]), in effect at the time the amended returns were filed, provided that the overpayment rate was the sum of the

federal short term rate plus two percentage points while the underpayment rate was the sum of the federal short term rate plus four percentage points. Therefore, there is statutory authority for the disparity in the overpayment and underpayment interest. As such, we find that the Administrative Law Judge properly rejected petitioners' arguments with regard to rates because the Tax Law grants the Commissioner of Taxation and Finance the exclusive authority to set these interest rates.

Accordingly, we find that petitioners are not entitled to any additional interest on their overpayment for the tax year 1994. Issue II is rendered moot because petitioners are not entitled any additional refund for the tax year 1994.

Turning to Issue III, we find that petitioners are not entitled to interest on the special mortgage recording tax credit. The Administrative Law Judge properly cited to Tax Law § 606(f)(3)(B), which explicitly provides that "no interest shall be paid on such overpayment." Accordingly, there is no statutory authority for interest to be paid on the special mortgage recording tax credit and the Division properly denied this claim.

We have considered petitioners' remaining arguments and find them properly rejected by the Administrative Law Judge. Petitioners failed to present any persuasive argument that would prove that the determination was erroneous in any way.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Michael A. and Janice L. Goldstein is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Michael A. and Janice L. Goldstein is denied; and

4. The Notice of Disallowance dated July 17, 2009, is sustained.

DATED: Troy, New York
September 22, 2011

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner