

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
	:	
of	:	
	:	
MICHAEL GOLDSTEIN AND	:	DECISION
JANICE GOLDSTEIN	:	DTA NO. 823088
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 1997 through 2002.	:	

Petitioners, Michael Goldstein and Janice Goldstein, and the Division of Taxation, each filed an exception to the determination of the Administrative Law Judge issued on December 30, 2010. Petitioners appeared by Samson Management (Ray W. Cruz, Esq., CPA, of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Robert Tompkins, Esq., of counsel).

Petitioners filed a brief in support of their exception and a letter brief in opposition to the Division of Taxation's exception. The Division of Taxation filed a letter brief in lieu of a formal brief in support of its exception and in opposition to petitioner's exception. The Division of Taxation filed a letter brief in lieu of a formal reply brief. Oral argument, at petitioners' request, was heard on September 14, 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 the Division of Taxation properly applied refunds for the years 1998, 1999,

2000, 2001 and 2002 against tax due for the year 1997.

II. Whether the interest accrued on the refunds for the years 1998, 1999, 2000, 2001 and 2002 was properly calculated by the Division of Taxation.

III. Whether the Division of Taxation properly calculated the interest owed by petitioners on the 1997 deficiency.

IV. Whether the Division of Taxation may utilize different rates of interest on underpayments and overpayments.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for findings of fact “1” and “12,” which have been modified. We have also omitted certain footnotes, as they are no longer necessary. The Administrative Law Judge’s findings of fact and the modified findings of fact are set forth below.

We have modified finding of fact “1” of the Administrative Law Judge’s determination to read as follows:

This case is an extension of the ***Matter of Michael A. and Janice L. Goldstein*** (Tax Appeals Tribunal, September 22, 2011) and shares one year in issue (1997) by virtue of the application of overpayments from the years 1998, 1999, 2000 and 2002 to 1997. As is appropriate, we take official notice of the record of the prior proceeding.^{1, 2}

On or about October 3, 2006, Michael and Janice Goldstein (petitioners) executed an IRS

¹ Pursuant to State Administrative Procedure Act § 306(4), “official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency.” A court may take judicial notice of its own prior proceedings (***Matter of Kolovinas***, Tax Appeals Tribunal, December 28, 1990; *see e.g. Matter of A.R.*, 309 AD2d 1153 [2003]; CPLR 4511). Herein, we take official notice of the record in ***Matter of Michael A. and Janice L. Goldstein*** (*supra*), a copy of which was duly served on petitioners.

² We modify this fact to more accurately reflect the record.

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 1994, there was an overassessment of \$103,117.00. For the year 1995, there was a deficiency of \$265,784.00. For the year 1996, there was no change. For the year 1997 there was a deficiency of \$359,377.00.

As a result of the federal changes, petitioners timely filed amended New York State resident income tax returns. The amended return for 1997 was filed on or about January 2, 2007 and stated additional tax due of \$104,306.00. Interest was accrued by the Division of Taxation (Division) on the 1997 deficiency from the due date of the original return until payment. Petitioners 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 Special Mortgage Recording Tax Credit (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.

On or about January 3, 2008, petitioners consented to income tax examination changes by executing IRS form 4549, which indicated refunds due for each of the years 1998, 1999 and 2000 in the respective amounts of \$157,445.00, \$58,356.00 and \$23,034.00.

On or about January 3, 2008, petitioners consented to income tax examination changes by executing IRS form 4549, which indicated refunds due for each of the years 2001 and 2002 in the respective amounts of \$940.00 and \$4,328.00.

On or about February 26, 2008, petitioners filed amended New York resident personal

income tax returns, forms IT-201-X, for the years 1998, 1999, 2000, 2001 and 2002 consistent with the federal changes reported. Each of the returns indicated a refund due as follows: \$16,524.00 for 1998; \$2,233.00 for 1999; \$33,293.00 for 2000; \$322.00 for 2001; and \$1,060.00 for 2002.

On November 18, 2008, petitioners filed claims for credit or refund of personal income tax on forms IT-113-X, seeking the following refunds: \$80,000.00 for 1997; \$25,000.00 for 1998; \$6,000.00 for 1999; \$40,000.00 for 2000; \$1,000.00 for 2001; and \$2,500.00 for 2002.

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.

Consistent with the law in effect during the year 1998, the Division computed interest on the refund from the date of the amended return, or February 26, 2008. For the years 1999, 2000, 2001 and 2002, the Division computed interest from the filing date of the original income tax

return, consistent with the statute then in effect.

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. As part of her duties, Ms. Murphy reviewed the computerized records of taxpayer accounts, allowing her to determine the accrual of interest and the application of payments and overpayments to deficiencies.

For the year 1997, Ms. Murphy noted that the Division's records indicate an assessment, L-028637778, setting forth tax due of \$104,306.00 and a payment in that sum dated January 3, 2007, made with an amended return. The records also reflected a payment on January 31, 2008 of \$13,191.31, applying the refund from 2004; a payment of \$1,276.71, dated June 5, 2008, applying the refund from 2002; a payment of \$72,091.21, dated June 26, 2008, applying refunds from 1998, 1999 and 2000 in the sums of \$25,108.75, \$3,290.59 and \$43,691.87, respectively.

In an electronic mail from Ms. Murphy to the Division's representative, Mr. Tompkins, dated January 11, 2010, Ms. Murphy reported the specific application of funds to the interest on the tax due as follows:

\$104,306.00	Tax Due
25,343.88	Interest from 4/15/1998 to 4/15/01
129,649.88	Balance
11,731.19	Balance of 2000 refund
117,918.69	Balance
7,527.81	Interest from 4/16/01 to 4/15/02
125,446.50	Balance
322.00	Less 2001 refund
125,124.50	Balance
7,714.60	Interest from 4/16/02 to 4/15/03
132,839.10	Balance
1,060.00	Less 2002 refund
131,779.10	Balance
38,852.50	Interest from 4/16/03 to 1/3/07

170,631.00	Balance
136,393.00	Less payment made on amended return as of 1/3/07
34,238.60	Balance
1,881.62	Interest from 1/4/07 to 8/9/07
36,120.22	Balance
54,230.00	Less 2004 refund credit
\$ 18,109.78	Overpayment after applying 2004 refund

We have modified finding of fact “12” of the Administrative Law Judge’s determination to read as follows:

The Division originally erred in computing the interest accrued for the year 1998 from the file date of the original return rather than the file date of the amended return. However, the Division agreed to compute the interest for the year 1998 from the file date of the original return rather than the file date of the amended return. In addition, the Division agreed that the refunds for the years 1998, 1999, 2000, 2001 and 2002 should have offset the deficiencies from prior years as of the original due dates of the refund years, thus applying the Income Tax Audit Guidelines Part III General, Interest Calculations When Netting Overpayments and Underpayments.³

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge held that Tax Law § 688(a)(former [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 for refund was filed. The Administrative Law Judge also found that petitioners would be entitled to their sought relief if the taxable years at issue had 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 on January 1, 1999, and, as such, the statute does not permit interest on refunds calculated from the original filing date. The Administrative Law Judge found that petitioners were not entitled to interest on refund claims for the special mortgage recording tax because Tax Law § 606(f)(3)(B) explicitly excludes the

³ We modify this fact to more accurately reflect the record.

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 trusts' 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 also 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. Petitioners also take exception based upon their belief that there is no paragraph "G" in the Administrative Law Judge's conclusions of law.

The Division takes exception to finding of fact “12” of the Administrative Law Judge’s determination. The Division argues that it would be more accurate to note that it originally erred in computing interest for the year 1998 from the original file date as opposed to the date the amended return was filed. However, the Division subsequently agreed to calculate interest for 1998 from the original file date. The Division notes that this has no material effect on the outcome of the matter (see findings of fact above).

Regarding petitioners’ exception, the Division argues that the Administrative Law Judge properly sustained the Notice 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.

In reaching this decision, we note that the legal issues are indistinguishable from ***Matter of Michael A. and Janice L. Goldstein (supra)***. These issues have been previously decided by this Tribunal (*see e.g. Matter of Michael A. Goldstein A No. 1 Trust*, Tax Appeals Tribunal, June, 29 2011; ***Matter of James McNulty (Deceased) and Shari McNulty***, Tax Appeals Tribunal, January 26, 2012). In reviewing the record, there are simply no facts that merit a conclusion different than any of the prior decisions of this Tribunal. We find that the Administrative Law Judge properly addressed each issue raised by petitioners in accordance with precedent.⁴

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

⁴ Insofar as we must address this point, paragraph “G” of the Administrative Law Judge’s conclusions of law is located on page 11 of the Determination (***Matter of Michael and Janice Goldstein***, Division of Tax Appeals, December 30, 2010)

1. The exception of the Division of Taxation is granted;
2. The exception of Michael and Janice Goldstein is denied;
3. The determination of the Administrative Law Judge is affirmed;
4. The petition of Michael and Janice Goldstein is granted to the extent that the Division agrees to compute interest for 1998 from the file date of the original return, but in all other respects is denied; and
5. The Notice of Disallowance, dated July 17, 2009, as modified in paragraph “4” above, is sustained.

DATED: Albany, New York
February 23, 2012

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

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