

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
SCOTT GOLDSTEIN AND LAUREN GABOR :
for Redetermination of a Deficiency or for Refund of :
Personal Income Tax under Article 22 of the Tax Law :
for the Years 1996 through 2002 and 2004. :

DECISION
DTA Nos 823702
and 823710

In the Matter of the Petition :
of :
ARNOLD AND ARLENE GOLDSTEIN :
for Redetermination of a Deficiency or for Refund of :
Personal Income Tax under Article 22 of the Tax Law :
for the Years 1994 through 1999 and 2004. :

Petitioners, Scott Goldstein and Lauren Gabor, and Arnold and Arlene Goldstein, filed an exception to the determination of the Administrative Law Judge issued on June 14, 2012.

Petitioners appeared by Samson Management, LLC (Ray Cruz, Esq., CPA, of counsel). The Division of Taxation appeared by Amanda Hiller, 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 reply brief. Petitioners' request for oral argument was denied.

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

ISSUE

Whether interest on petitioners Scott Goldstein and Lauren Gabor's refunds for 1996 and 1997 and petitioners Arnold and Arlene Goldstein's refunds for 1994 and 1997 should accrue from the date of the amended returns claiming the refunds or from the date that the original returns were filed.

FINDINGS OF FACT

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

On or about August 31, 2006, petitioners Scott Goldstein and Lauren Gabor executed an Internal Revenue Service (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. The agreement covered the years 1994 through 1997. On or about January 10, 2008, the IRS issued to petitioners Scott Goldstein and Lauren Gabor final federal determinations for the years 1998 through 2002.

In response to the executed offer to waive restrictions and the final federal determinations, petitioners Scott Goldstein and Lauren Gabor filed amended nonresident and part-year resident income tax returns, form IT-203-X, for the years 1996 through 2002.

In addition, on or about March 8, 2007, petitioners Scott Goldstein and Lauren Gabor filed an amended resident income tax return, form IT-203-X, for the year 2004, claiming a special mortgage recording tax credit.

Following the issuance of credits and refunds by the Division of Taxation (Division) in response to the amended income tax returns, petitioners Scott Goldstein and Lauren Gabor filed

claims for credit or refund of personal income tax, form IT-113-X, for the years 1996 through 2002 and 2004, asserting that the interest calculations on the credits and refunds were incorrect.

On September 26, 2008 and July 24, 2009, the Division issued to petitioners Scott Goldstein and Lauren Gabor notices of disallowance of refund claims for the years 1996, 1997, 2000, 2001, 2002 and 2004. The notices state, in part, as follows:

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.

The record in this matter does not contain a notice of disallowance for the years 1998 and 1999.

On or about September 25, 2006, petitioners Arnold and Arlene Goldstein 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. The agreement covered the years 1994 through 1997. On or about February 11, 2008, the IRS issued to petitioners Arnold and Arlene Goldstein final federal determinations for the years 1998 and 1999.

In response to the executed offer to waive restrictions and the final federal determinations, petitioners Arlene and Arnold Goldstein filed amended resident income tax returns, form IT-201-X, for the years 1994 through 1999.

In addition, on or about March 8, 2007, petitioners Arnold and Arlene Goldstein filed an amended resident income tax return, form IT-201-X, for the year 2004, claiming a special mortgage recording tax credit.

Following the issuance of credits and refunds by the Division in response to the amended income tax returns, petitioners Arnold and Arlene Goldstein filed claims for credit or refund of

personal income tax, form IT-113-X, for the years 1994 through 1999 and 2004, asserting that the interest calculations on the credits and refunds were incorrect.

On July 17, 2009, the Division issued to petitioners Arnold and Arlene Goldstein a notice of disallowance of refund claims for the years 1994, 1995, 1996, 1998 and 2004. The notice states, in part, as follows:

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.

The record in this matter does not contain a notice of disallowance for the years 1997 and 1999.

During the course of the hearing in these matters, the parties entered into two identical stipulations that eliminated all but one of the original issues presented. The parties stipulated that with respect to overpayments and deficiencies on all of the petitioners' personal income tax returns resulting from federal audit changes reported by petitioners for the years at issue, the Division allowed the overpayments to offset deficiencies for the purpose of reducing or eliminating interest accruals on the deficiencies. The parties also stipulated that computations include the appropriate reduction for overpayment years of penalty and interest previously paid that are reduced as a result of the reduction of income from the federal changes.

The stipulation also provided that the Division compute interest on the refunds claimed by petitioners for the special mortgage recording tax credit.

The filing of the federal changes, amended personal income tax returns and the stipulations resulted in the following adjustments for petitioners Scott Goldstein and Lauren Gabor: an overpayment of tax in the amount of \$112,867.00 for 1996; an overpayment of tax in the amount of \$52,733.00 for 1997; an underpayment of tax in the amount of \$2,505.00 for 1998; an underpayment of tax in the amount of \$8,643.00 for 1999; an overpayment of tax in the

amount of \$54,770.00 for 2000; an overpayment of tax in the amount of \$463.00 for 2001; and an overpayment of tax of \$145.00 for 2002. For the overpayment years of 1996 and 1997, the Division accrued refund interest only from the filing date of the refund claim, rather than from the original return filing date. Interest on the 2000, 2001 and 2002 overpayments was accrued from the original return filing date. Underpayment years (1998 and 1999) accrued interest on the deficiencies from the original return due dates.

The filing of the federal changes, amended personal income tax returns and the stipulations resulted in the following adjustments for petitioners Arnold and Arlene Goldstein: an overpayment of tax in the amount of \$10,992.00 for 1994; an underpayment of tax in the amount of \$17,210.00 for 1995; an underpayment of tax in the amount of \$31,180.00 for 1996; an underpayment of tax in the amount of \$1,906.00 for 1997; an overpayment of tax in the amount of \$25,847.00 for 1998; and an overpayment of tax of \$104,055.00 for 1999. For the overpayment years of 1994 and 1997, the Division accrued refund interest only from the filing date of the refund claim, rather than from the original return filing date. Interest on the 1999 overpayment was accrued from the original return filing date. Underpayment years accrued interest on the deficiencies from the original return due dates.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge acknowledged the stipulations made by the parties resulting in adjustments in petitioners' favor. Turning to the remaining issue of whether interest on petitioners' returns should be calculated from the original filing date, or from the date of the amended filing, the Administrative Law Judge found that the Tax Law permitted interest only from the date the amended return was filed. In reaching this conclusion, the Administrative Law Judge noted that the facts of the instant matter did not materially differ from other cases on the

issue of interest calculation under Tax Law former § 688. The Administrative Law Judge noted that there was no conflict between Tax Law former § 688 and Tax Law § 687. As such, the Administrative Law Judge granted the petitions to the extent provided by the stipulations, but denied the petitions in all other respects.

ARGUMENTS ON EXCEPTION

Petitioners raise arguments that are identical to those raised before the Administrative Law Judge, to wit, that the Division's interpretation of Tax Law former § 688 is inconsistent when read in context of Tax Law § 687. As such, petitioners contend that interest should be calculated from the date of the original returns.

The Division contends that no such inconsistency exists and that it properly interpreted Tax Law former § 688.

OPINION

We affirm the determination of the Administrative Law Judge.

In *Matter of Michael A. Goldstein No. 1 Trust v Tax Appeals Trib. of the State of N.Y.* (101 AD3d 1496 [2012]), the Appellate Division rejected the specific arguments regarding statutory interpretation that petitioners raised in this matter. Petitioners failed to provide any information or argument that would require further analysis.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Scott Goldstein and Lauren Gabor and Arnold and Arlene Goldstein is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petitions of Scott Goldstein and Lauren Gabor and Arnold and Arlene Goldstein are granted to the extent modified by the determination of the Administrative Law Judge, but are otherwise denied.

4. The Notices of Disallowance are granted to the extent indicated in paragraph “3” above, but are otherwise sustained.

DATED: Albany, New York
May 9, 2013

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

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