

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
CHARLOTTE SABATINE	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1966 through 1972.	:	

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Petitioner, Charlotte Sabatine, 8085 East Phillips Circle, Englewood, Colorado 80112, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1966 through 1972 (File No. 800025).

A hearing was held before Joseph W. Pinto, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 11, 1986 at 2:20 P.M., with all briefs to be submitted by April 27, 1987. Petitioner appeared by Robert A. Bloom, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether petitioner, Charlotte Sabatine, is properly entitled to a refund of the personal income taxes she paid for the years at issue based on the innocent spouse provisions of the Tax Law.

FINDINGS OF FACT

1. Charlotte Sabatine (hereinafter "petitioner") and her then husband, John Sabatine, filed joint Federal and New York State income tax returns for the years 1966 through 1972, inclusive (the "audit period").

2. On August 24, 1976, the Audit Division issued a Notice of Additional Tax Due/Notice and Demand to petitioner and John Sabatine. The adjustments made on said statement were the same as the adjustments made for Federal purposes, which were agreed to by John Sabatine in

1974. Said adjustments are as follows:

<u>Year</u>	<u>Adjustment</u>
1966	\$ 9,989.70
1967	9,733.74
1968	39,491.56
1969	34,216.40
1970	23,471.76
1971	30,942.00
1972	22,154.00

3. According to the Federal Forms 4549, Income Tax Audit Changes, the aforesaid adjustments, which were in excess of 25% of the amount of New York adjusted gross income stated on the return, were for additional income which was determined to be attributable solely to John Sabatine's medical practice. Said forms noted that:

"The fraud penalty [section 6653(b)] is not asserted against Charlotte Sabatine under provisions of public law 91-679 as no part of the underpayment is due to her fraud."

4. On May 18, 1977, the Audit Division issued a notice and demand pursuant to Tax Law § 694, for payment of tax due under a jeopardy assessment for the audit period. Said notice asserted the following deficiencies:

	<u>Deficiency</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1966	\$ 944.19	\$ 472.09	\$ 530.13	\$ 1,946.41
1967	973.02	486.51	487.94	1,947.47
1968	5,507.42	2,753.71	2,431.36	10,692.49
1969	4,210.35	2,105.17	1,606.12	7,921.64
1970	3,235.74	1,617.87	1,040.19	5,893.80
1971	4,331.88	2,165.94	1,132.66	7,630.48
1972	<u>3,406.28</u>	<u>1,703.14</u>	<u>858.11</u>	<u>5,967.53</u>
	\$22,608.88	\$11,304.43	\$8,086.51	\$41,999.82

5. Petitioner and John Sabatine were married in May 1965. In January 1975 petitioner moved out of the marital residence with her two minor daughters. In March 1975 petitioner and Mr. Sabatine were divorced.

6. After their marriage in May of 1965, petitioner and John Sabatine rented an apartment for approximately one and one half years. Subsequently, they purchased a house in Port

Washington, New York for approximately \$30,000.00. During this time John Sabatine practiced medicine in an office he established in Great Neck, New York. About three years later Dr. and Mrs. Sabatine moved to another house which they had built at a cost of approximately \$115,000.00.

7. About four years later, Dr. Sabatine defaulted on the mortgage and the house was foreclosed upon and sold at public auction in September 1976. The proceeds of the sale were used to satisfy a number of liens, including one by the Internal Revenue Service for back taxes. The surplus monies were paid to the Nassau County Treasurer.

8. Petitioner paid one half of the aforementioned Federal tax liability. Thereafter she filed claims for refund, seeking relief under the "innocent spouse" rule. On October 11, 1984, following litigation in the District Court for the Eastern District of New York, she was awarded judgment with respect to the taxable years 1966, 1967 and 1968. However, the reason or reasons for said award were not disclosed. For the remaining years, 1969 through 1972, she was found ineligible for refund.

9. On September 1, 1982, the Nassau County Treasurer paid \$38,914.53 to the State Tax Commission for taxes, penalty and interest due for the audit period. Said payment was made solely on behalf of petitioner from surplus monies resulting from the action in foreclosure. The Tax Commission, at the request of the Audit Division's representative, accepted said payment in full satisfaction of petitioner's tax liability for the audit period.

10. On August 20, 1984, petitioner filed a New York State claim for refund for each of the years at issue. Said claims, which were based on the "innocent spouse" rule, were timely submitted since they were filed within two years from her payment of the tax.

11. During the nine years petitioner and John Sabatine were married, petitioner worked approximately 10 days. Such work was performed in her occupation as a registered nurse. Petitioner never worked in John Sabatine's office, reviewed his business records or was informed of the amount of his income.

12. Petitioner signed all tax returns filed during the audit period but was not aware of any omission of income.

13. Petitioner described the last marital residence as "lavish" and conceded that she and John Sabatine owned up to four automobiles at any given time during their marriage. They also entertained frequently. Petitioner had credit cards in her name and access to other credit cards in her husband's name. Petitioner's sister, who lived with her and Dr. Sabatine during the late 1960's, characterized their lifestyle at that time as "a good lifesytle like you would expect a doctor to live. They had a nice home, they went out to nice places to eat and that kind of thing weekly."

#### SUMMARY OF PETITIONER'S POSITION

14. Petitioner contends that her application for a refund should be granted because she is relieved of liability by virtue of the innocent spouse provisions of the Tax Law. In the alternative, she contends that her refund application for the years 1966, 1967 and 1968 should be granted to be consistent with the Federal jury award.

#### CONCLUSIONS OF LAW

A. That Tax Law § 651(b) (former [5][i]) provided that:

"Under regulations prescribed by the tax commission, if

(A) a joint return has been made...for a taxable year and on such return there was omitted from New York adjusted gross income an amount properly included therein which is attributable to one spouse and which is in excess of twenty-five percent of the amount of New York adjusted gross income stated in the return,

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission and

(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from New York adjusted gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission, then the other spouse shall be relieved of liability for tax (including interest, penalties and other amounts) for such taxable year to the extent that such liability is attributable to such omission from New York adjusted gross income."

B. That petitioner demonstrated that the omitted income was attributable to her husband

and that she had no knowledge of the omission. However, petitioner significantly benefited directly or indirectly from the income omitted by John Sabatine during the audit period. In fact, during those years the couple enjoyed an ever-increasing standard of living, evidenced by their moves from an apartment to a resale home to new construction worth \$115,000.00. Additionally, petitioner's spending allowance, credit cards, cars and lifestyle are further evidence of a significant benefit from the omitted income. Accordingly, petitioner does not qualify for relief on the tax liability asserted for the audit period.

C. That the Federal "innocent spouse" rule applicable to the audit period is found at Internal Revenue Code § 6013(e)(1). It provides that a spouse may be relieved of responsibility where: (a) a joint return was filed for the applicable year; (b) there was a substantial understatement of tax attributable to grossly erroneous items of one spouse; (c) the other spouse establishes that, in signing the returns, he or she did not know and had no reason to know of such substantial understatement; and, (d) taking into account all the facts and circumstances, it would be inequitable to hold the non-offending spouse liable. The New York requirement that the non-offending spouse significantly benefit from the items omitted from gross income is not included in the Federal definition which was amended by Public Law 98-369 § 424(a), effective July 18, 1984. Said statute is retroactive to all taxable years to which the Internal Revenue Code of 1954 applies, including pending court cases where the decision was not yet final. Hence, it was applicable to petitioner's case in Federal court for which judgment was granted in her favor. Prior to July 18, 1984, the Federal definition included the "significant benefit" provisions. Therefore, the Federal jury award to petitioner was not based on the same standard applicable for New York purposes and, hence, the Audit Division is not bound by the Federal jury award.

D. That the petition of Charlotte Sabatine is denied and the claims for credit or refund of personal income tax filed by petitioner on August 20, 1984 for the tax years 1966 through 1972 are hereby denied.

DATED: Albany, New York  
December 17, 1987

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ADMINISTRATIVE LAW JUDGE