STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
IRA SPANIERMAN	:	DETERMINATION DTA NO. 808685
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law and Title T of the Administrative Code of the City of New York for the Year 1985.	:	

Petitioner, Ira Spanierman, c/o Spanierman Gallery, 50 East 78th Street, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Title T of the Administrative Code of the City of New York for the year 1985.

A hearing was held before Jean Corigliano, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on October 3, 1991 at 1:15 P.M. Petitioner filed a brief and reply brief on November 29, 1991 and February 3, 1992, respectively. The Division filed a brief on January 14, 1992. Petitioner appeared by Steven Glaser, Esq. The Division appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUES

I. Whether petitioner filed a valid application for extension of time to file his 1985 personal income tax return.

II. Whether, if petitioner filed a valid application, the Division of Taxation properly imposed penalties for failure to file a timely income tax return and for failure to timely pay tax.

III. Whether, if penalties were properly imposed, petitioner has shown reasonable cause to support the abatement of penalties.

FINDINGS OF FACT

Petitioner, Ira Spanierman, is a dealer in fine art. From 1969 until 1985, petitioner was

the sole shareholder of Ira Spanierman, Inc., (the "corporation") a corporation which owned and operated an art gallery in New York City. Prior to 1985, petitioner, acting under the advice of his accountants, determined to dissolve the corporation and begin operating the gallery and art dealership as a sole proprietor. In order to accomplish this goal, the assets of the corporation, consisting almost entirely of works of art, were transferred to petitioner as a liquidating distribution. Petitioner understood that as a result of this transaction he would have to pay Federal and State income taxes in 1985 based on his capital gain from the distribution.

In order to calculate his 1985 tax liability, it was necessary for petitioner to determine the fair market value of the artwork. In the absence of actual sales of the artwork, petitioner believed that appraisal was the only appropriate method of estimating fair market value. Early in 1986 petitioner hired Mary M. Walsh, an independent appraiser, to value approximately 700 works of art transferred to him by the corporation and to prepare a written appraisal of the collection. The performance of the appraisal was delayed because of an illness in Ms. Walsh's family. As a result, the appraisal was not submitted to petitioner and his accountants until September 25, 1986.

Because the appraisal was not completed before April 15, 1986, petitioner was not able to accurately determine the full amount of his New York State and New York City personal income tax liability for 1985 by the prescribed date for filing. Petitioner's accountant, Paul Brieloff, prepared and timely filed on petitioner's behalf an application for an automatic extension of time to file State and City personal income tax returns for 1985. In his application, petitioner estimated a total State and City tax liability of $7,500.00. This amount was somewhat greater than petitioner's 1984 State and City personal income tax liability.

The form (IT-370) filed by petitioner states on its face: "This is not an extension of time for payment of tax. You must pay any tax due with this form. There is a penalty for paying the tax late." That portion of the form that asks the taxpayer to enter the amount of the taxpayer's tax liability states: "you may estimate this amount". As material here, the reverse side of the form states:

"File Form IT-370 on or before the due date of the return to get an automatic 4 month extension of time to file [New York State and New York City personal income tax returns].

* * *

"The extension will be granted if you complete this form properly, file it on time, and pay with it the amount of tax shown on line 12." (Emphasis added.)

"Late payment penalty -- If you do not pay your tax liability when due, you will have to pay a penalty of 1/2 of 1% of the unpaid amount for each month or part of a month it is not paid. The penalty will not be charged if you can show reasonable cause for paying late. This penalty is in addition to the interest charged for late payments.

* * *

"Late filing penalty -- If you file your [personal income tax return] late, or if you do not file Form IT-370 on time and pay your tax liability with it, you will have to pay a penalty of from 5 to 25% of the tax due. If a return is not filed within 60 days (including extensions) of the time prescribed for filing a return, the penalty may not be less than the lesser of $100 or 100% of the amount required to be shown as tax on the return. The penalty will not be charged if you can show reasonable cause for filing late."

Petitioner made total estimated tax payments of $12,802.00 for 1985, and an additional $1,248.00 was withheld from his wages. It was his understanding, based on advice from his accountant, that he would be required to pay interest on the balance of his tax liability for 1985 but that no penalty would be imposed because he had timely and properly filed a form IT-370. Petitioner was not told that he was required to estimate his tax liability on the basis of an estimate of the value of the artwork he received.

As the appraisal of the art work was not completed by August 15, 1986, petitioner's accountant filed an application for an additional extension until October 15, 1986 to file petitioner's 1985 returns. This application was approved by the Division on August 21, 1986.

Petitioner filed a 1985 New York State and City Resident Income Tax Return on or about October 15, 1986. The return showed a capital gain of $2,211,067.00 and a total State and City tax liability of $501,045.00. Petitioner made a payment with the return of $521,280.00. With amounts already paid, petitioner's tax payments totalled $535,330.00.

The Division of Taxation ("Division") issued a Notice and Demand, dated August 6, 1987, to petitioner asserting a penalty of $129,053.76. The notice contained the following

explanation:

> "Your extension of time is invalid because the total payments received by the due date were less than 90% of the tax due. Penalty and interest for late filing and late payment are imposed."

Petitioner paid the full amount of penalty and interest imposed by the Division and made a timely claim for refund of the penalty plus all interest paid on it. The Division denied the refund by letter dated April 30, 1990 which stated in material part: "You have failed to establish reasonable cause to abate the penalty for late payment and/or late filing."

Petitioner has no training or experience in law or accounting. His educational background is in liberal arts. He engaged the accounting services of Paul Brieloff for many years before the liquidation of the corporation took place. Petitioner was never assessed additional tax, penalty or interest until the instant assessment occurred.

In order to ensure that the liquidation of the corporation was being handled correctly, petitioner engaged the services of a law firm, in part to oversee the work done by Mr. Brieloff. In September 1986, an accountant working with the law firm informed petitioner that he might be subject to a penalty for late payment of tax because of his failure to estimate his 1985 tax liability accurately. Because of this, petitioner lost confidence in his old accountant and hired a law firm to oversee his work in the future.

Pursuant to State Administrative Procedure Act § 306(4), official notice is taken of the following fact:

Form IT-370 for the years 1986 through 1988 contained the following instruction:

> "You must indicate the properly estimated amount of tax liability. Taxes are deemed properly estimated if you pay at least 90 percent of the taxes as finally determined. Taxes as finally determined are the total amount of taxes which the return shows to be due or would have shown to be due but for mathematical errors. To obtain a valid extension of time to file, where the taxes as finally determined are $1,000 or more, Form IT-370 must be accompanied by a full remittance of the properly estimated amount of taxes due as of April 15, 1988."

SUMMARY OF THE PARTIES' POSITIONS

Petitioner claims that the Division based the imposition of penalties on a regulation which was not in effect in the 1985 tax year and argues that the regulation in effect in 1985 did

not provide for the invalidation of an otherwise proper extension on the ground asserted by the Division. In the alternative, petitioner contends that he has established reasonable cause for his failure to pay 90% of the tax due by the due date for filing the 1985 return. Petitioner claims that he reasonably relied on the advice of his accountant when estimating his tax liability for 1985 and based on that advice believed that no penalty would be imposed if he reported and paid an amount at least equal to his 1984 tax liability. Moreover, he maintains that it was not possible for him to more accurately estimate his tax liability until the appraisal of the art work was completed at the end of September 1986.

The Division asserts that the regulations governing the 1985 tax year were more severe than those governing later years and provided for imposition of late filing and late payment penalties on any tax remaining due after April 15, 1986, regardless of whether a valid extension had been requested or granted. Alternatively, the Division argues that under the 1985 regulations a valid extension existed only where the full amount of tax due for the taxable year was remitted with the application for an extension. Since petitioner remitted only an insignificant percentage of the tax due (approximately 1.5%), the Division claims that petitioner never had a valid extension of time to file a return or pay the tax liability. The Division also argues that in order to receive a valid extension it was necessary for petitioner to remit payment of 90% of the tax due at the time of filing the application. Finally, the Division asserts that petitioner has not established reasonable cause for his failure to properly estimate and pay the full amount of the tax liability by April 15, 1986.

CONCLUSIONS OF LAW

A. Tax Law § 685(a)(1)(A)[1] provides for an addition to tax in the case of a failure to file a personal income tax return on or before the prescribed date for filing "determined with regard to any extension of time for filing" (emphasis added). Tax Law § 685(a)(2) provides for an addition to tax "[i]n the case of failure to pay the amounts shown as tax on any return required to be filed under [article 22] on or before the prescribed date (determined with regard to any extension of time for payment)" (emphasis added).

Section 657(a) of the Tax Law grants to the former State Tax Commission (now the Commissioner of Taxation and Finance) the authority to extend the time for payment of tax or for filing of any return pursuant to article 22, on terms and conditions to be determined by the Commission. Pursuant to this broad grant of authority, the Commission first adopted regulations for automatic extensions of time for filing returns and paying tax in or about 1967. Those regulations provided an automatic extension of time to file a return without application, as long as a copy of an approved Federal extension was attached to the New York return when filed. An extension of time to file automatically extended the time to pay the tax shown as due on the return (20 NYCRR former 151.2). This regulation was repealed and a new

regulation was adopted, effective March 26, 1982. The new regulation was itself amended, effective July 22, 1983.

The regulation, in effect for the 1985 tax year (from here on the "1985 regulation"), uncoupled the extension of time for payment of tax from the automatic four-month extension of time to file a return; consequently, an extension of time to file no longer extended the time to pay (20 NYCRR former 151.6). An automatic extension of time to file was granted if certain

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[1]The personal income tax imposed by Title T of the Administrative Code of the City of New York refers to Article 22 of the Tax Law and contains corresponding provisions which are essentially the same as those in Article 22. Therefore, all references in this determination to provisions of the Tax Law shall be deemed references, although uncited, to the corresponding provisions of Title T.

requirements were met (20 NYCRR former 151.2[a]). The application was to be prepared on form IT-370 and signed by the taxpayer or his appointed representative (20 NYCRR former 151.2[a][1]), and the application was to be filed on or before the date for filing the State income tax return (20 NYCRR former 151.2[a][2]). 20 NYCRR former 151.2(a)(3) set forth the more substantive requirements, stating:

> "(i) ...the application must indicate thereon the full amount of the New York State personal income tax liability and the full amount of the City of New York tax liability for such taxable year. The full amount of the...tax liability for the taxable year may be estimated".
>
> "(ii) The application must be accompanied by a full remittance of the amount of New York State personal income tax and City of New York tax remaining unpaid as of the date prescribed for the filing of the New York State income tax return." (Emphasis added.)

While the regulation specifically allowed for the estimation of the full amount of the tax liability, it did not provide instructions on how to estimate the tax or specify on what basis the taxes would be deemed properly estimated. The regulation did provide that "no extension...will be granted until the provisions of [section 151.2] have been met" (20 NYCRR former 151.2[a][4]). Finally, the regulation states that the extension of time to file a return "will not operate to extend the time for the payment of any... tax due on such return" (20 NYCRR former 151.2[a][5]).

20 NYCRR former 151.8(b) provided for the imposition of interest and penalties. As pertinent, it provides:

> "Late payment and late filing penalties may be imposed on any balance of New York State personal income tax and City of New York tax remaining unpaid after the due date of the return, determined without regard to any extension of time to file, unless there can be shown reasonable cause for such late payment or late filing." (Emphasis added.)

Reasonable cause was presumed if at least 90% of the tax due was paid on or before the original due date of the return.

B. One thing is certain. Pursuant to the 1985 regulation, even if petitioner was granted a valid extension of time to file a 1985 return, he was not granted an extension of time for payment of tax due on that return. Both the regulation and the instructions on the IT-370 clearly

make this point and warn the taxpayer that a late-payment penalty will be imposed if the amount of tax liability is underestimated. Since petitioner was not granted an extension of time to pay the tax due, the Division was required to impose the penalty provided for by Tax Law § 685(a)(2). Whether petitioner had reasonable cause warranting abatement of the penalty is an issue which will be discussed later.

C. The more difficult question is whether a penalty was properly imposed for failure to timely file the 1985 return. Petitioner argues that he filed for and received valid extensions of time to file and that under the 1985 regulation there was no provision for invalidating an extension on the ground that less than 90% of the tax was paid by the due date of the return. The Division takes the position that petitioner did not have a valid extension of time to file and has offered three separate theories to support this position. First, the Division offered a Technical Services Memorandum (TSB-M-83-[5]-I [Rev]) which states, in pertinent part:

> "Penalties may be imposed (whether or not an extension of time to file was requested) on any balance of tax remaining unpaid on the due date of the return. If at least 90% of the tax due was paid on or before the original due date of the return, no penalty will be imposed. If this test is not met, it will be considered that a valid extension to file never existed and the taxpayer will be subject to both 685 (a)(1) failure to file penalty, and 685(a)(2) failure to pay penalty."

The Notice and Demand issued to petitioner provides the rationale of the Technical Services Memorandum as an explanation for imposition of penalties. In its brief, the Division appeared to abandon this position. There, the Division argued that the 1985 regulation was more severe than the Memorandum and Notice and Demand indicate and required the imposition of late-filing and late-payment penalties, if the full amount of tax due was not paid by the due date of the return, without regard to whether an extension of time to file was granted. In the alternative, the Division argues that petitioner did not have a valid extension because he failed to meet the requirements of 20 NYCRR former 151.2(a)(3)(iii), in that his application for an extension was not accompanied by the full amount of tax due. The Division does not refer to the provision allowing the taxpayer to estimate the full amount of the tax liability.

D. The 1985 regulation presents several problems, some of which were pointed out in the Division's Notice of Adoption of regulations amending 20 NYCRR 151.2 (NY Reg, December

10, 1986, pp 22-23). The revised regulation (from here on the "1986 regulation") essentially adopted the policy expressed in the Technical Services Memorandum of August 22, 1983 but also added an additional provision. Under the 1986 regulation, no penalty for late filing would be imposed if: (1) the taxpayer, owing tax of more than $1,000.00, submitted a timely application for extension, properly estimated the amount of tax due for that year, and paid that amount with his extension application; or (2) the taxpayer, owing tax of less than $1,000.00 submitted an application indicating the properly estimated amount of tax due. A tax was deemed properly estimated if it was at least 90% of the tax as finally determined to be due.

According to the Notice of Adoption, two main difficulties were identified in the 1985 regulation, necessitating the amendment. First, the Division stated that:

> "the [1985] regulation conflicts with the statutory provisions of 685(a)(1) and (2) of the Tax Law which specify that the additions to tax for late filing and late payment are to be imposed on any balance of tax outstanding after the due date, determined with regard to any extensions" (id. at 22).

The 1985 regulation provided for imposition of the late-filing penalty as well as the late-payment penalty, regardless of whether an extension of time for filing had been granted. It then allowed for abatement of the penalty upon a showing of reasonable cause. The second difficulty identified by the Division was that the prior "regulation itself does not require that any balance due be paid within the extended due date". (Id.) This last statement is confusing. The prior regulation required payment of the full amount of the tax liability at the time application was made for an extension. This may have meant that a valid extension for filing a return was granted only if the taxpayer paid 100 percent of the tax liability at the time of filing the application (the Division's position here). On the other hand, the regulation and the IT-370 explicitly state that the "full amount" of the tax liability "may be estimated". As pointed out above, the 1985 regulation provides no guidance for estimating, nor does it provide for the invalidation of an extension if the tax is not properly estimated. The Technical Services Memorandum indicates that a tax was deemed properly estimated only if the estimate was 90% of the tax due. However, it would appear that at the time the 1985 regulation was amended the Division interpreted the regulation as petitioner does here, allowing the taxpayer to estimate his

tax liability and granting a valid extension of time to file a return upon payment of the full amount estimated. This construction of the 1985 regulation is consistent with the Division's statement that the 1985 regulation did not require that the "balance due" be paid within the extended due date.

The position urged by the Division in this proceeding is different from that stated in the Technical Services Memorandum. The Division asserts that a valid extension did not exist unless the taxpayer estimated the amount of his tax liability with total accuracy and paid that amount with his application. This would appear to defeat the very notion of an estimate and place the taxpayer in the untenable position of not knowing whether he had a valid extension until he obtained all of the information necessary to file an actual return. Moreover, neither the regulation nor the IT-370 suggested that an estimate of less than the full amount of tax due would result in an invalidation of the extension. Rather, the regulation created a presumption of reasonable cause if the balance owed at the time of filing of a return was no more than 10% of the total liability.

Given the Division's own difficulty in interpreting the 1985 regulation, as demonstrated by the inconsistencies that exist among and between the language of the 1985 regulation, the instructions found on the 1985 IT-370, the policies stated in the Technical Services Memorandum, the explanations contained in the Notice of Adoption, the Notice and Demand sent to petitioner and the Division's brief, the task of determining whether penalties were properly imposed for late filing of the return is somewhat daunting. I conclude, however, that the late-filing penalties were not properly imposed for the following reasons.

First, it is noted that the Notice and Demand issued to petitioner stated that the extension is invalid because the total payments received by the due date for filing were less than 90% of the tax due. This statement clearly refers to the 1986 regulation. The 1985 regulation did not provide for invalidation of an extension on this basis. To the extent that the Technical Services Bureau Memorandum indicates that the Division followed such a policy in 1985, it is in conflict with the 1985 regulation and is being disregarded partially for that reason. It is also being

disregarded because the 1986 amendment would not have been necessary (except to the extent that it was more liberal with regard to taxpayers owing less than $1,000.00 in tax) if the 1985 regulation was as the Technical Services Bureau Memorandum would have it. The Notice of Adoption of the 1986 regulation provides further support for this viewpoint. It states that one purpose of the amendment of the 1985 regulation was to conform the income tax and corporation tax rules to each other, to the extent possible (NY Reg, supra at 22). The corporation franchise tax law for 1985 and 1986, enabled a corporation to obtain an extension of time by filing an application and paying, by the prescribed date for filing its annual report, the amount properly estimated as its tax (Tax Law § 211.1). A tax was deemed properly estimated if it was not less than 90 percent of the tax as finally determined or not less than the amount of tax paid in the preceding taxable year (Tax Law § 213.1[b]; 20 NYCRR 7-1.3). It is apparent that the 1986 income tax regulation was adopted to provide a 90% rule in income tax similar to that which already existed in corporation tax. Accordingly, I find that the 1985 regulation had no mechanism for invalidating an extension on the basis that total payments made at the time of application were less than 90% of the tax due.

Second, the 1985 regulation must be disregarded to the extent that it indicates that a penalty may be imposed for late filing and late payment, without regard to any extension of time to file (20 NYCRR former 151.8[b]). This statement is in direct conflict with the Tax Law, as the Notice of Adoption pointed out. Third, I can find no support for the Division's statement that an extension was deemed invalid if payment of the full amount of tax finally determined to be due was not made at the time of the application. Neither the regulation nor the IT-370 for 1985 indicates that this result was contemplated by the 1985 regulation. Since the 1985 regulation allowed the taxpayer to estimate the "full amount" of the tax liability, it is more reasonable to assume that a valid extension was granted if the taxpayer paid the full amount of the estimated tax as shown on the application.

Finally, in determining whether the late-filing penalty was properly imposed, I am partially influenced by the Division's most recent amendment of 20 NYCRR 151.2. This

amendment, effective as of October 17, 1990, is a partial retreat to the 1985 regulation. 20 NYCRR 151.2(a)(4)(i) now provides that an application for an extension "must indicate thereon the full amount properly estimated" of the tax liability for the taxable year and "be accompanied by a full remittance of the amounts properly estimated". Section 151.7(b) provides that additions to tax for late filing and late payment must be imposed on any balance of tax due after the due date of the return, determined with regard to extensions of time to file or to pay, unless reasonable cause is established pursuant to section 102.7 or unless "the provisions relating to the presumption of reasonable cause pursuant to section 102.7(c)(2) of [Title 20] are met for such late payment". Section 102.7(c)(2) creates a presumption of reasonable cause where an application for extension of time to file has been properly filed and the amount of tax paid with the application (including taxes withheld from wages and other estimated tax payments) is at least 90% of the amount finally determined due at the time of filing of the return. As with the regulation governing 1985, the current regulation does not provide for the automatic invalidation of an extension on the ground of an improper estimate. However, Form IT-370 for 1991 indicates the taxpayer must specify the amount of his 1991 tax liability and states:

> "You may estimate, or, if you do not expect to owe tax, enter "0", but be as exact as you can with the information you have. If we later find that your estimate was not reasonable, the extension will not be allowed."

The 1985 IT-370 filed by petitioner had no such warning. Accordingly, I find that it was reasonable for petitioner to conclude that he could obtain a valid extension of time to file his 1985 return by filing a form IT-370, estimating the tax in accordance with his 1984 liability[2] and making total payments during the extended period in amounts in excess of the amount of tax estimated.

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[2]Payment of not less than the amount of the tax liability for the preceding taxable year is deemed a proper estimate under Tax Law 213.1 which applied to corporation franchise tax. Under Tax Law § 685(c) taxpayers required to make installments of estimated tax are deemed to have satisfied the requirement that installment payments equal the annual payment where the amount paid is one hundred percent of the tax shown on the return of the individual for the preceding year. In lieu of any guideline for properly estimating tax liability in the 1985 regulation, an estimate equal to the tax liability for the prior year would appear reasonable.

E. The final issue to be addressed is whether petitioner has shown reasonable cause for failure to pay the tax due on or before the prescribed date for payment. As stated above, the extension of time to file the 1985

return did not extend the time to make payment of the tax due and thus the late-payment penalty was properly imposed under section 685(a)(2). Petitioner bases his contention that he has established reasonable cause for late payment on several sets of circumstances. First, petitioner asserts that he reasonably relied on the advice of his accountant who completed the application for extension of time to pay. Second, petitioner claims that he made a good faith effort to ascertain and pay his tax liability as shown by his retention of a second set of accountants and attorneys to advise him on the tax consequences of liquidating the corporation's assets. Finally, petitioner asks that his previous unblemished record of timely filing returns and paying tax due be considered.

For the year in issue, 20 NYCRR 102.7(b), as relevant here, provided that grounds for finding reasonable cause included:

> "[the] inability to obtain and assemble essential information required for the preparation of a complete New York State income tax return despite reasonable efforts;" and
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> * * *
>
> "any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a New York State income tax return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Past performance will be taken into account, ignorance of the law, however, will not be considered reasonable cause."

Petitioner has not shown reasonable cause for failure to make timely payment of his 1985 tax liability. In determining whether reasonable cause exists, an important factor to be considered is the extent of the taxpayer's efforts to ascertain its tax liability (see, Matter of John R. Grace & Co., Tax Appeals Tribunal, May 10, 1990). Petitioner was well aware that his tax liability for 1985 would greatly exceed his liability for 1984, and yet neither he nor his accountant made an effort to determine the amount of the 1985 liability with any degree of

precision. While I can appreciate the fact that the value of the artwork could not be accurately estimated without a professional appraisal of its worth, petitioner has given no reason why some estimate could not have been made.

The mere fact that petitioner relied on his accountant of many years to properly complete the application for an extension of time to file does not show reasonable cause. As stated by the court in Matter of LT & B Realty Corp. v. State Tax Commn. (141 AD2d 185, 535 NYS2d 121), "[t]o permit consulting with a tax professional to act as immunity to penalties would effectively remove the penalty provisions". Consequently, to determine whether reliance on the erroneous advice of a professional constitutes reasonable cause, all of the facts must be examined. The factors to be considered are these: whether the taxpayer relied in good faith on the advice he received; whether it was reasonable for the taxpayer to rely upon the particular advice given (see, id.); and whether the taxpayer acted with ordinary business care and prudence in attempting to ascertain his liability for taxes (see, Matter of Kenneth J. Erikson, Tax Appeals Tribunal, March 22, 1990). In determining whether the taxpayer's reliance was reasonable, the nature and complexity of the matter giving rise to the dispute must be considered (id.).

The record merely establishes that petitioner left it to his accountant to properly complete any required tax forms. There is no evidence that petitioner independently attempted to ascertain his tax liability or the requirements pertaining to the late payment of tax. The IT-370 in use in 1985 was unequivocal and declared on its face: "This is not an extension of time for payment of tax." In the face of such a clear statement, it cannot be found that petitioner acted with ordinary business care and prudence in attempting to determine his obligations under the Tax Law. Moreover, the fact that petitioner eventually hired a firm of attorneys who advised him that he would be liable for late payment penalties does not establish reasonable cause for his failure to pay his tax liability during the period of the extended due date.

F. The petition of Ira Spanierman is granted to the extent indicated in Conclusion of Law "D"; a refund of the penalty imposed under Tax Law § 685(a)(1) will be granted accordingly; and in all other respects the petition is denied.

DATED: Troy, New York

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ADMINISTRATIVE LAW JUDGE