

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
GERSH AND HELENA KORSINSKY : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 816989
Personal Income Tax under Article 22 of the Tax Law and :
the Administrative Code of the City of New York for the :
Year 1994. :

Petitioners, Gersh and Helena Korsinsky, 1236 49th Street, #4B, Brooklyn, New York 11219-3026, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 1994.

A hearing was held before Arthur S. Bray, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on October 21, 1999, at 10:30 A.M. with all briefs to be submitted by January 6, 2000, which date began the six-month period for the issuance of this determination. Petitioner Gersh Korsinsky appeared *pro se* and for his wife, Helena Korsinsky. The Division of Taxation appeared by Barbara G. Billett, Esq. (Kathleen D. Chase, Esq., of counsel).

ISSUES

- I. Whether the Notice of Additional Tax Due was barred by the statute of limitations.
- II. Whether the Division of Taxation's assertion of a deficiency based upon Federal audit changes was proper and whether petitioners have shown wherein such audit was in error.

FINDINGS OF FACT

1. Petitioners, Gersh and Helena Korsinsky, filed a U.S. Individual Income Tax Return for the year 1994. The return included a schedule of interest and dividend income (“Schedule B”) which, on separate lines, reported interest income from Anchor Savings Bank in the amounts of \$336.59 and \$1,871.38, respectively. Petitioners reported total interest income in the amount of \$4,912.20. Petitioners’ return also reported, among other things, dividend income from Invesco Funds Group in the amount of \$168.19. They reported total dividend income in the amount of \$1,101.12.

2. Petitioners filed a New York State Resident Income Tax Return for the year 1994 which reported the same amount of interest and dividend income as was reported to the Internal Revenue Service.

3. The Division of Taxation (“Division”) received an Internal Revenue Service form CP-2000 which stated that there had been changes to the amount of interest and taxable dividends shown on petitioners’ income tax return. Specifically, the form CP-2000 indicated that, according to respective Form 1099 dividend statements, petitioners received additional dividends in the amount of \$1,428.00 from the IMF - Cash Reserves Fund and they received additional dividends in the amount of \$955.00 from the IIF - High Yield Fund resulting in total additional dividend income of \$2,383.00. The form CP-2000 also disclosed that Form 1099 interest statements showed that petitioners received total interest income of \$6,853.00 from five separate bank accounts at Anchor Savings Bank FSB. Consequently, the Internal Revenue Service determined that petitioners’ interest income was \$1,941.00 greater than that reported on their Federal return.

4. On the basis of the information provided by the Internal Revenue Service, the Division issued a Notice of Additional Tax Due, dated November 4, 1997, which stated that tax was due in the amount of \$363.00 plus interest of \$82.17 for a balance due of \$445.17. The notice explained that it was based on information which New York State received from the Internal Revenue Service and that a bill was issued because the Division had no record that petitioners reported the changes made to their Federal taxable income within 90 days from the final IRS determination. The notice further explained, among other things, that interest and dividend income on their New York return was corrected to include the Federal adjustment.

5. In response to the notice, petitioners filed a Request for Conciliation Conference, which set forth the following explanation for making a claim:

I have already settled with the Internal Revenue Service (IRS) for the tax year ending December 31, 1994. I settled with the IRS as a matter of convenience because I did not have the time nor the energy to defend my innocence. I did not settle with the IRS on the merits and I still contest their determination. This settlement only applies to the IRS and does not include any other taxing agency including the N.Y.S. Department of Taxation. If the N.Y.S. Department of Taxation would like an examination on those taxes I will gladly cooperate.

However, according to an initial review of my records, I have made all payments to the N.Y.S. Department of Taxation for all previous years. This includes any amounts for the 1994 tax year. Being that we are almost in 1998, the canceled checks are not easily accessible. Regardless, I object to the N.Y.S. Department of Taxation raising doubt about taxes concerning almost 4 years ago. The N.Y.S. Department of Taxation could have requested payment earlier for any assessments. Further, I object any interest or any other charges on the assessed amount.

6. Petitioners' request to the Bureau of Conciliation and Mediation Services was denied and this proceeding ensued.

7. An investment summary addressed to petitioners from Invesco Funds Group for the period January 1, 1994 through December 31, 1994 shows the receipt of dividends from the IMF

Cash Reserves Fund in the amount of \$1,428.69 and the IIF Short Term Bond Fund in the amount of \$955.50.

SUMMARY OF THE PARTIES' POSITIONS

8. The Division states that petitioners were issued a Statement of Additional Tax Due on the basis of a Federal-State tape match which indicated that there was a discrepancy between the income reported to the Internal Revenue Service and the income reported to New York State. It is asserted that petitioners did not report the final Federal change to their taxable income for the year 1994. Further, since the Federal changes were not reported to New York State, the statute of limitations did not begin to run.

9. In response, Mr. Korsinsky stated that he never reported income to the IRS that was not also reported to New York State. Further, Mr. Korsinsky recalls being audited for 1993 but does not remember being audited for 1994 or reaching a settlement with the IRS for 1994. Mr. Korsinsky posits that there never was an issue with the Internal Revenue Service with respect to the receipt of unreported interest income from a bank or unreported dividends from Invesco. According to Mr. Korsinsky, he did not receive a Form 1099 reporting the interest income upon which the Division has assessed the tax in issue. He also explained that since Anchor Savings Bank merged with Dime Savings Bank, he is unable to obtain the necessary documents. In addition, Mr. Korsinsky requests that he be provided with a copy of the statement which was provided to the Division or the IRS stating that he owes tax on additional interest income.

It is Mr. Korsinsky's position that the dividends in issue were reinvested and included in the sales price as part of the cost basis of the funds on a Form 1040, Schedule D. He also stated that, despite his statement in the Request for Conciliation Conference (Finding of Fact "5"), he entered into a settlement with the IRS for 1993 and not 1994.

CONCLUSIONS OF LAW

A. Tax Law former § 659 provided in relevant part:

[i]f the amount of a taxpayer's federal taxable income . . . is changed or corrected by the United States internal revenue service . . . or if a taxpayer's claim for credit or refund of federal income tax is disallowed in whole or in part, the taxpayer . . . shall report such change or correction in federal taxable income . . . or such disallowance of the claim for credit or refund within ninety days after the final determination of such change, correction, renegotiation or disallowance, or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous Any taxpayer filing an amended federal income tax return . . . shall also file within ninety days thereafter an amended return under this article, and shall give such information as the commissioner may require.

Tax Law former § 681(e)(1) provided that if a taxpayer failed to comply with section 659 of the Tax Law then instead of issuing a Notice of Deficiency the Division "may assess a deficiency based upon such federal change, correction or disallowance by mailing to the taxpayer a notice of additional tax due" The deficiencies, interest and additions to tax or penalties stated in a Notice of Additional Tax Due are deemed assessed on the date the notice is mailed

unless within thirty days after the mailing of such notice a report of the federal change, correction or disallowance or an amended return, where such return was required by section six hundred fifty-nine, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous (Tax Law § 681[e][1]).

B. The evidence supports the conclusion that there was a final Federal determination resulting in a change in petitioners' taxable income for the year 1994. Initially, it is noted that the Division has misconstrued the nature of the Federal change. A comparison of the Federal return with the corresponding New York State return shows that the same amount of dividends and interest that was reported to the Internal Revenue Service was also reported to New York State. However, the Federal form CP-2000 shows that more taxable dividends and interest were

reported to the Internal Revenue Service on Form 1099s then were reported by petitioners to either the IRS or the Division. Interestingly, the statement from Invesco confirms that the dividends in question were paid to Mr. Korsinsky. It is recognized that since the Federal adjustments were based on documents received by the Internal Revenue Service and not based upon a face-to-face meeting, Mr. Korsinsky's belief that he was not audited by the Internal Revenue Service for 1994 is understandable.

C. In general, the Division must assess a deficiency of personal income tax within three years after a return is filed (Tax Law § 683[a]). However, an assessment may be made at any time if the taxpayer fails to comply with Tax Law § 659 (Tax Law § 683[c][1][C]). Here, since petitioners believed that the Internal Revenue Service did not make an adjustment to their income for 1994, they obviously did not report the changes in issue to New York State.

D. The dividend income received by petitioners should have been reported as income on their return (IRC § 61[a][7]). Petitioners' argument that the dividends were reinvested and included in Schedule D concerns the cost or other basis of the shares when computing capital gains or losses. This argument does not address the issue presented here, which is the failure to report the dividends as income.

E. The Division placed into evidence the Federal form CP-2000 which showed that more interest income was reported to the Internal Revenue Service on a group of 1099-INT statements than was reported by petitioners on their Federal and State returns. It also placed into evidence a copy of the Federal return which showed the amount of interest income which was originally reported and the Notice of Additional Tax Due which showed the amount of adjusted gross income which was originally reported to New York State. Since the interest income was subject to personal income tax (IRC § 61[a][4]), it was rational for the Division to rely on the Federal audit changes as a basis for issuing the assessment (*see, Matter of Karayannides*, Tax Appeals

Tribunal, March 13, 1970). Therefore, the burden of proof was upon petitioners to show that the Notice of Additional Tax Due was incorrect (Tax Law § 689[e]; *see, e.g., Matter of Delia v. Chu*, 106 AD2d 815, 484 NYS2d 204). Here, petitioners have not presented any evidence which would satisfy this burden.

F. The petition of Gersh and Helena Korsinsky is denied and the Notice of Additional Tax Due, dated November 4, 1997, is sustained together with such interest as may be lawfully due.

DATED: Troy, New York
June 22, 2000

/s/ Arthur S. Bray
ADMINISTRATIVE LAW JUDGE