

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JAG M. AND VEENA KALRA : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 817132
New York State and New York City Personal Income Taxes :
under Article 22 of the Tax Law and the Administrative :
Code of the City of New York for the Year 1994. :
:

Petitioners, Jag M. and Veena Kalra, 142-09 Barclay Avenue, Apartment 30, Flushing New York 11355, filed a petition 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 Administrative Code of the City of New York for the year 1994.

A hearing was held before Winifred M. Maloney, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, 10022 on January 24, 2000 at 10:30 A.M., with all briefs to be submitted by May 1, 2000, which date began the six-month period for the issuance of this determination. Petitioner Jag M. Kalra appeared *pro se* and for Veena Kalra. The Division of Taxation appeared by Barbara G. Billet, Esq. (Kevin R. Law, Esq., of counsel).

ISSUES

- I. Whether penalties imposed under Tax Law § 685(a) and (b) should be cancelled.
- II. Whether interest may be abated.

FINDINGS OF FACT

1. On January 22, 1998, the Division of Taxation (“Division”) issued to petitioners, Jag M. and Veena Kalra,¹ a Notice of Deficiency (Notice No. L-014440832-3) for the year 1994. The notice asserted a deficiency of New York State and New York City personal income taxes in the amount of \$4,739.56, penalty of \$2,114.36 and interest of \$1,174.41, for a total balance due of \$8,028.33. No payment of tax or credits was reflected on this notice.

2. The Division issued a Statement of Proposed Audit Changes to petitioners on or about November 28, 1997. It asserted a deficiency in New York State and New York City personal income taxes totaling \$4,739.56 which was calculated by the Division on the basis of information it received from the Internal Revenue Service. The statement further explained that a late filing penalty had been imposed together with a negligence penalty. It also explained that an amount equal to 50% of the interest due had been imposed since petitioners' deficiency was due to negligence or intentional disregard of the Tax Law.

3. On or about January 27, 1998, petitioner Jag M. Kalra filed a timely request for a conciliation conference with the Division’s Bureau of Conciliation and Mediation Services (“BCMS”). In the request Mr. Kalra asserted, among other things, that he had not received any correspondence prior to the issuance of the Notice of Deficiency.

4. In response to their request for a conciliation conference, the Division sent petitioners a letter dated April 2, 1998 which outlined the basis for the issuance of the Notice of Deficiency. The letter stated, in pertinent part, as follows:

¹ In some of the documents in the record Mr. Kalra's name is listed as Jag M. Kalra while in others it is listed as either Jagmohan Kalra or Jag Mohan Kalra.

Information furnished by the Internal Revenue Service, under authorization of Section 6103(d) of the Internal Revenue Service, indicates that you filed a Federal tax return using a New York State address.

Since we are unable to locate your New York return, and you did not reply to our previous letter, your tax has been computed as a resident of New York State based on the Federal information.

The starting point for computing your New York tax is federal adjusted gross income.

Since your address indicates that your residence is in New York City, we have also computed City of New York resident tax.

Interest is due on the underpayment of tax from the due date of the return to the date the tax is paid in full. Interest is required under section 684(a) of the New York State Tax Law.

Penalty of 25% for not filing a state tax return within five months of its due date has been applied. (Section 685[a][1] of the New York State Tax Law).

A negligence penalty of 5% is imposed on the total correct tax. The penalty is applied to total correct tax before prepayments, rather than the balance due, because you did not file a return (section 685[m] of the New York State Tax Law).

In addition to the 5% negligence penalty, an amount equal to 50% of any interest due on a deficiency or portion of a deficiency attributable to negligence or intentional disregard of the Tax Law has been imposed (section 685[b][2] of the New York State Tax Law).

A computation of the New York State and New York City taxes due, less tax withheld, plus penalties and interest was included in the letter. The letter also requested a photocopy of the cancelled check or money order sent in payment by petitioner.

5. By letter dated April 14, 1998, petitioner Jag M. Kalra responded to the Division's April 2, 1998 letter. In that letter, Mr. Kalra claimed that he had filed his New York State income tax return and had sent the Division a partial payment of \$500.00 and had requested an extension of time for payment of the balance. The documents enclosed with the letter included, among other

things, a copy of petitioners' 1994 income tax return bearing the signatures of the paid preparer and both petitioners, dated March 22, 1995 and April 15, 1995, respectively. The copy of the return in the record shows total New York State and New York City personal income taxes in the amount of \$4,834.00, less total taxes withheld in the amount of \$1,351.00, for total taxes due in the amount of \$3,483.00.² No proof of the claimed partial payment was enclosed, nor was any proof of a request for an extension of time to pay enclosed.

6. In its April 24, 1998 letter, the Division notified petitioners that it had no record of a \$500.00 payment for 1994. Petitioners were asked to provide photocopies of both sides of their cancelled check or money order showing the deposit serial number stamped on the face of the check. The letter also stated that the Division had allowed credit for taxes withheld in the amount of \$94.44 based on information present in its withholding tax records. However, it would allow additional withholding tax if wage and tax statements were furnished which showed a larger amount of withholding.

7. A conciliation conference was held on December 1, 1998. Petitioners were given the opportunity to submit wage and tax statements post conference.

On December 23, 1998, a copy of petitioners' 1994 Resident Income Tax Return (IT-201), along with a copy of a Form W-2 Wage and Tax Statement 1994 issued by New York Life Insurance Company to Jag M. Kalra was sent to the conferee. According to the wage and tax statement, a total of \$1,351.28, consisting of \$861.35 in state income tax and \$489.93 in local income tax, was withheld from Mr. Kalra's compensation.

² Although the return identified that both New York State and New York City taxes had been withheld, a copy of a Form W-2 Wage and Tax Statement was not attached to the return.

8. On March 5, 1999, BCMS issued a Conciliation Order (CMS No. 165854) to petitioners wherein the tax due was reduced to \$3,484.63, plus penalty and interest. In response to the Conciliation Order, petitioners filed a timely petition with the Division of Tax Appeals.

SUMMARY OF THE PARTIES' POSITIONS

9. Petitioners admit that they owe the tax as recomputed by the conferee. However, petitioners argue that they did not willfully neglect this matter. They maintain that they are law-abiding citizens who have always filed their tax returns. Petitioners aver that, as in prior years, they mailed their 1994 State and Federal income tax returns by ordinary mail. They do not know why the Division did not receive their State return given the fact that the Internal Revenue Service received and processed their Federal return for that year.

While asserting that they filed their 1994 State income tax return, petitioners admit that they did not remit the taxes shown due on that return. They aver that they were unable to pay the taxes at that time because of severe financial difficulties which were the direct result of Mr. Kalra's affiliation as an insurance agent, during the years 1993 and 1994, with New York Life Insurance Company.

Lastly, petitioners assert that their source of income continues to be very limited and they are unable to pay the tax, interest and penalties which are currently due. Based on their inability to pay, they request that penalties, interest, and a portion of the tax be abated.

10. With respect to the abatement of interest, the Division notes that interest will be abated upon a showing of error or delay by one of its employees. It asserts that in the instant case there were no errors or delays which would give rise to an abatement of interest.

The Division argues that petitioners have not set forth any basis that would allow for abatement of penalties. It contends that petitioners have not proven that their return was actually

filed. Additionally, the Division notes that petitioners have admitted that they did not pay the tax shown as due on said return. Finally, the Division contends that ability to pay is not a basis which would allow the Division of Tax Appeals to abate tax, interest or penalties.

CONCLUSIONS OF LAW

A. Tax Law § 651(a)(1) requires every resident individual who is required to file a Federal income tax return for the taxable year to make and file a New York State individual income tax return on or before the 15th day of the fourth month following the close of the taxable year. To the extent relevant herein, penalties may be imposed for failure to file a return (Tax Law § 685[a][1]). Penalties may also be imposed if any part of a deficiency is due to negligence or intentional disregard of Article 22 of the Tax Law or the rules and regulations thereunder (Tax Law § 685[b][1], [2]). If the failure to file a return is due to reasonable cause and not due to willful neglect, the penalty may be abated (Tax Law § 685[a][1]). However, the absence of willful neglect alone is not sufficient grounds for not imposing additions to tax or penalties or for cancelling additions to tax or penalties (20 NYCRR former 107.6[a]).

B. 20 NYCRR former 107.6(c)(1) stated, in pertinent part, that:

[R]easonable cause shall not be determined to exist as a basis for not imposing or for cancelling the additions to tax for failure to file a New York State income tax return or for failure to pay the amount of New York State income tax shown on such return, under, respectively, section 685(a)(1) and (2) of the Tax Law, where it is determined that the taxpayer or the taxpayer's duly authorized representative could have reasonably been expected to timely request extensions of time to file the New York State income tax return or extensions of time to pay the New York State income tax due, but failed to do so. However, reasonable cause may be determined to exist with respect to these additions to tax where:

(i) no extensions of time to file the New York State income tax return or no extensions of time to pay the New York State income tax due have been requested and it is determined that, given the circumstances, it would have been unreasonable to expect such extensions to be requested. . . .

C. 20 NYCRR former 107.6(d), in pertinent part, stated:

[T]he following exemplify grounds for reasonable cause, where clearly established by or on behalf of the taxpayer, employer or other person:

* * *

(4) Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. . . .

D. Petitioners have failed to establish that reasonable cause exists to abate the penalties assessed. Although I found Mr. Kalra to be a very sincere witness, he did not give any particulars concerning the preparation of the return by his paid tax preparer; the signing of the return by either his wife or himself; or the mailing of the 1994 personal income tax return. Although the copy of the personal income tax return which is part of the record bears the date April 15, 1995, petitioners failed to identify the date upon which they believe they filed the original return. In addition, petitioners have admitted that they failed to pay the taxes shown as due on their personal income tax return. There is no indication in the record that petitioners filed any extensions of time to pay. Petitioners assert that their failure to pay was due to severe financial problems. Their argument is unpersuasive. Economic difficulties do not excuse a failure to pay taxes (*Matter of Dworkin Construction Co.*, Tax Appeals Tribunal, August 4, 1988). Accordingly, the Division properly assessed penalties in this matter.

E. Petitioners are also seeking an abatement of the interest assessed on the tax as recomputed by the conferee. They do not allege any errors or delays by any of the Division's employees. Rather, they base their request upon their inability to pay due to severe financial problems. With regard to the interest assessed in this matter, it is noted that the Commissioner of Taxation and Finance has no authority to waive the interest imposed on personal income tax

liabilities under Tax Law § 684 (*Matter of Chase*, State Tax Commission, August 12, 1987).

The purpose of interest is not to penalize the taxpayer but to reimburse the State for the use of the money (*Matter of Framapac Delicatessen*, Tax Appeals Tribunal, July 17, 1993; *Matter of Rizzo*, Tax Appeals Tribunal, May 13, 1993).

Essentially, failure to remit tax gives the taxpayer the use of funds which do not belong to him or her, and deprives the State of funds which belong to it. Interest is imposed on outstanding amounts of tax due to compensate the State for its inability to use the funds and to encourage timely remittance of tax due (*Matter of Rizzo, supra*).

F. Petitioners have also requested that a portion of the tax be abated. Petitioners are not challenging the tax as recomputed by the Conciliation Order. Rather, their request is based on an inability to pay because they continue to suffer severe economic difficulties. Although I am sympathetic to petitioners' plight, an inability to pay is not a basis which allows the abatement of tax, interest or penalties.

G. The petition of Jag M. and Veena Kalra is denied and the Notice of Deficiency issued January 22, 1998, as modified by the Conciliation Order dated March 5, 1999, is sustained.

DATED: Troy, New York
July 06, 2000

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE