

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
GODWIN C. AND KIM L. OKOLIE : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 818067
New York State and New York City Personal Income :
Tax under Article 22 of the Tax Law and the :
Administrative Code of the City of New York for the :
Years 1991 and 1992. :

Petitioners, Godwin C. and Kim L. Okolie, 83 Bagatelle Road, Dix Hills, New York 11747, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 1991 and 1992.

A small claims hearing was held before Thomas C. Sacca, Presiding Officer, at the offices of the Division of Tax Appeals, Veterans Memorial Highway, Hauppauge, New York, on June 11, 2002 at 9:15 A.M., with all evidence to be submitted by September 16, 2002, which date began the three- month period for the issuance of this determination. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Gillian S. Adkinson).

ISSUE

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. The Division of Taxation (“Division”) issued to petitioners, Godwin C. and Kim L. Okolie, two notices of additional tax due dated October 20, 1997, which asserted \$7,490.09 and \$9,380.15 in additional New York State and City personal income tax due, plus late-filing and negligence penalties and interest, for the years 1991 and 1992, respectively.

2. Following a conciliation conference, the Division’s Bureau of Conciliation and Mediation Services issued to petitioners a Conciliation Order dated July 21, 2000, which sustained the assessments at issue.

3. The issuance of the notices of additional tax due resulted from the Division’s receipt of notification from the Internal Revenue Service of Federal audit changes increasing petitioners’ 1991 and 1992 Federal tax liability by \$19,808.00 and \$25,169.00, respectively.

On December 4, 1995, the United States Tax Court called the case of *Okolie v. Commissioner of Internal Revenue* from the Trial Session of the Court of New York. As there was no appearance by or on behalf of petitioners, the Tax Court issued an Order of Dismissal and Decision, on December 19, 1995, in which the case was dismissed for failure to properly prosecute. The Tax Court further ordered and decided that there were deficiencies in income tax for the years 1991 and 1992 of \$19,808.00 and \$25,169.00, respectively.

4. The Division calculated the assessments of tax at issue using the information supplied by the Internal Revenue Service. Specifically, the Division determined petitioners’ New York adjusted gross income to be \$129,877.00 for the year 1991 and \$171,517.00 for the year 1992. The Division then calculated petitioners’ liability as married taxpayers. Specifically, after allowing for itemized deductions of \$27,281.00 for 1991 and \$53,852.00 for 1992 and personal exemptions of \$3,000.00 for each year, the Division determined New York taxable income of

\$99,603.00 for the year 1991 and \$114, 694.00 for the year 1992, and calculated New York State and City income tax due accordingly.

5. Petitioners did not notify the Division of the Federal audit changes that resulted in the Order of Dismissal and Decision issued by the United States Tax Court.

6. On December 15, 2000, the Internal Revenue Service issued a Withdrawal of Filed Notice of Federal Tax Lien, Form 10916(c), relating to the assessments issued for the years 1991 and 1992. No information is provided on the form as to the reason for the Federal tax lien being withdrawn.

SUMMARY OF PETITIONERS' POSITION

7. Petitioners contend that the additional income determined by the Internal Revenue Service was based upon Mr. Okolie's buying and selling of used automobiles during the years at issue. Mr. Okolie claims that the Internal Revenue Service considered the sales price of the automobiles as income, without deducting the cost of the automobiles or the cost of any repairs made to the automobiles prior to their sale. Mr. Okolie further contends that after negotiations with the Internal Revenue Service, the Federal tax lien was withdrawn. No documentation was produced during the hearing or in the time allowed to petitioners following the hearing which explained the basis of the Federal tax deficiencies or the withdrawal of the Federal tax lien.

CONCLUSIONS OF LAW

A. As pertinent here, Tax Law § 659 provides that where a taxpayer's Federal taxable income is changed or corrected by the Internal Revenue Service the taxpayer must report such change or correction to the Division of Taxation within 90 days after the final determination of such change or correction and either concede the accuracy of the Federal change or state the taxpayer's basis for asserting that the change or correction is erroneous. If the Federal change or

correction is not reported within the 90-day period, the Division is authorized by Tax Law § 681(e) to issue a notice of tax due. Furthermore, where a taxpayer fails to report the Federal change or correction as required, such a notice may be issued at any time (*see*, Tax Law § 683[c][1][C]). The issuance of such a notice gives rise to a right to a hearing where the correctness of the notice may be challenged (*Matter of Jaffe*, Tax Appeals Tribunal, September 21, 1995).

B. The United States Tax Court's issuance of the Order of Dismissal and Decision in the case of *Okolie v. Commissioner of Internal Revenue* constitutes a final Federal determination for purposes of Tax Law § 659. Petitioners did not report such changes to the Division. Since petitioners failed to comply with the reporting requirements of Tax Law § 659, the Division's assessments of tax against petitioners by notices of additional tax due was proper (*see*, Tax Law § 681[e][1]; § 683[c][1][C]).

C. The Order of Dismissal and Decision showed that an audit of petitioners by the Internal Revenue Service resulted in additional Federal tax liabilities and additional Federal adjusted gross income for the years at issue. Since such additional income was subject to Federal income tax, it was rational for the Division to rely on the information contained in the Tax Court's Order as a basis for issuing the assessment (*see, Matter of Karayannides*, Tax Appeals Tribunal, March 13, 1997). Therefore, the burden of proof was upon petitioners to show that the notices of additional tax due were 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.

D. The petition of Godwin C. and Kim L. Okolie is denied and the Notices of Additional Tax Due, dated October 20, 1997 are sustained.

DATED: Troy, New York
October 31, 2002

/s/ Thomas C. Sacca
PRESIDING OFFICER