

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MARK J. CHMIEL</b>	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 818158
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1997.	:	

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Petitioner, Mark J. Chmiel, 6302 Old Beattie Road, Lockport, New York 14094, filed petitions for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1997.<sup>1</sup>

A hearing was held before Winifred M. Maloney, Administrative Law Judge, at the offices of the Division of Tax Appeals, 77 Broadway, Buffalo, New York, on July 18, 2001 at 9:30 A.M., with all briefs to be submitted by November 7, 2001, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel).

***ISSUES***

- I. Whether the Division correctly disallowed one of petitioner's claimed exemptions.
- II. Whether interest imposed on a tax deficiency may be canceled based on petitioner's contention that the Division of Taxation delayed in assessing the deficiency.

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<sup>1</sup> Although only one Notice of Deficiency was issued, petitioner filed two petitions in this matter: the first one challenges the additional tax assessed and the second one challenges the interest assessed. The two petitions have been consolidated under one DTA number.

***FINDINGS OF FACT***

1. Petitioner, Mark J. Chmiel, and his wife, Deborah M. Chmiel,<sup>2</sup> filed a joint 1997 New York State resident personal income tax return on or before April 15, 1998. On that return, petitioner and his spouse reported New York adjusted gross income of \$25,010.00 and, after subtracting the New York standard deduction of \$13,000.00 and dependent exemptions of \$2,000.00, taxable income of \$10,010.06. Total New York State tax of \$351.00 was subtracted from total New York State tax withheld of \$397.73, resulting in a claimed overpayment of \$46.73. Attached to that return was a Form IT-216, Claim for Child and Dependent Care Credit, on which petitioner and his spouse computed their New York State child and dependent care credit for their son, Brandon M. Chmiel, to be \$27.50.

2. The Division of Taxation (“Division”) received information from the Internal Revenue Service (“IRS”) which indicated that petitioner and his spouse filed a 1997 joint Federal income tax return, claiming one exemption for each spouse, plus a third exemption for a dependent child. This information was supplied from a Federal/State tape match (“FITS”), which are reports from the IRS containing information from a taxpayer’s Federal income tax return.

3. As a result of the discrepancy between the number of exemptions claimed on petitioner’s 1997 Federal income tax return and the number of exemptions claimed on his 1997 New York State personal income tax return, the Division disallowed one of the two dependent exemptions claimed. The disallowance of one of the exemptions resulted in a \$1,000.00 increase in New York State taxable income and a tax due of \$44.00.

4. On August 11, 2000, the Division issued a Notice and Demand for Payment of Tax Due (Notice No. L-018421683) to petitioner and Deborah M. Chmiel which assessed additional tax

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<sup>2</sup> Mrs. Chmiel is not a party to these proceedings.

due for 1997 in the amount of \$44.00, plus interest in the amount of \$7.83, for a total balance due of \$51.83. The Notice and Demand offered the following explanation, in pertinent part:

Based on our review, an error was made in computing the correct exemption amount on your 1997 New York State return.

New York State only allows exemptions for dependents. The personal exemptions for you and your spouse are no longer allowed.

Your tax is recomputed to reflect the correct number of exemptions allowed for New York State purposes. . . .

If you have any questions regarding this adjustment, please review the Exemption Section of your 1997 federal return. Only the DEPENDENT(S) claimed at line 6c can be claimed as a dependent exemption(s) on your New York State return. . . .

This bill could not be issued before this date because of the time required to review the information received from the Internal Revenue Service.

Interest is required by Section 684(a) of the New York State Tax Law. (Capitalization in original.)

5. Brandon M. Chmiel, born in 1989, is Mr. and Mrs. Chmiel's only child.
6. On November 15, 2000, petitioner filed two petitions relating to the Notice and Demand issued in this matter. The first petition challenges the additional tax asserted and the second petition challenges the imposition of interest on the asserted tax deficiency. By letter, dated November 27, 2000, the Division of Tax Appeals acknowledged that the petitions were in proper form. The letter also advised petitioner that the petitions were forwarded to the Division's Office of Counsel for preparation of an answer. The Division of Tax Appeals consolidated both petitions under one DTA number.
7. An Answer, dated January 11, 2001, addressing the issues raised in both petitions was submitted by the Division.

8. On March 15, 2001, the Calendar Clerk of the Division of Tax Appeals sent a Notice to Schedule Hearing & Prehearing Conference to the parties. That notice advised the parties that the Division of Tax Appeals anticipated scheduling the hearing in July or August 2001 and the parties should contact each other to set a mutually convenient date and location for the hearing during those months.

9. On April 17, 2001, the Division notified the Division of Tax Appeals that the parties agreed to the date of July 18, 2001 for the hearing to be conducted in Buffalo but that petitioner requested that the July 18<sup>th</sup> hearing address the interest issue only and a separate hearing addressing the tax issue be scheduled for a subsequent date. By letter, dated April 19, 2001, Assistant Chief Administrative Law Judge Daniel J. Ranalli advised Mr. Chmiel that in instances such as his, where a case involves a single assessment raising multiple issues, the Division of Tax Appeals holds one hearing covering all issues raised.

10. At the hearing held on July 18, 2001, the issues raised in both petitions were addressed.

#### ***SUMMARY OF THE PARTIES' POSITIONS***

11. Petitioner challenges the Division's issuance of the Notice and Demand on a number of grounds. Initially, petitioner requests that his petitions be granted and the Notice and Demand be canceled for failure to provide him with timely and accurate due process. He bases this request on the fact that the hearing in this matter took place approximately eleven months after the issuance of the Notice and Demand and approximately eight months after the timely filing of his petitions. Next, petitioner asserts that, in the preparation of his 1997 New York State personal income tax return, he made a mathematical error in writing \$2,000.00 as the dependent exemption amount. He maintains that the number of dependent exemptions have been the same

since 1989, the year of his son's birth, and that there was no change in the indication of the number of dependents on his 1997 New York State personal income tax return. Petitioner claims that the Division failed to follow its internal screening policies when it initially reviewed his 1997 personal income tax return. He asserts that if the Division had done its job properly in its initial screening of his and his spouse's tax return and utilized its historical record that indicated that petitioner and his spouse had only one dependent, it would have discovered the error and made the appropriate adjustment in the refund amount claimed on their tax return. Petitioner avers that he and his wife received the refund amount indicated by them on their return. He further claims that the tax refund that they received would have covered the additional amount of tax assessed. Lastly, with respect to the imposition of interest on the additional tax asserted to be due, petitioner proposes three alternative resolutions. First, he contends that interest should be abated in full since it took the Division almost 2½ years to notify him that he had made a mathematical error on his return. Petitioner asserts that the Division failed to conduct a proper initial screening of his 1997 personal income tax return for completeness and accuracy because it failed to review its historical record of the number of dependent exemptions claimed on his income tax returns for prior years and compare that number to the number of dependent exemptions claimed on his 1997 tax return. He points out that the Division discovered the error on his 1997 personal income tax return only after it reviewed information that it received from the IRS. Second, if interest is properly due in this matter, petitioner claims that it should be assessed as of the date of issuance of the Notice and Demand to petitioner and his spouse, not from December 31, 1997 as was computed by the Division.<sup>3</sup> Petitioner asserts that he should not

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<sup>3</sup> Petitioner's contention that the Division computed the interest from December 31, 1997 is incorrect. Actually, the Division computed the interest from April 15, 1998 pursuant to Tax Law § 684(a).

be responsible to pay interest on money that he did not know he owed before he was told he owed it. Lastly, if the Division has the ability to provide a grace period of any type for the payment of a deficiency found to be due on a tax return prior to the assessment of interest and penalty, petitioner requests that he be afforded the grace period for payment of the tax liability once a determination is made by the Division of Tax Appeals that the additional tax is properly due. He makes this last alternative request because the hearing in this matter did not take place until approximately eight months after the petitions were filed with the Division of Tax Appeals.

12. The Division argues that it properly disallowed one of the two exemptions claimed on petitioner's 1997 New York State personal income tax return and computed additional tax due in the amount of \$44.00. It asserts that interest is properly due on the additional tax determined to be due pursuant to Tax Law § 684. The Division also contends that the Notice and Demand was timely issued on August 11, 2000 because it was issued within three years of the April 15, 1998 filing of petitioner's 1997 New York State personal income tax return.

### ***CONCLUSIONS OF LAW***

A. Petitioner requests that his petitions be granted and the Notice and Demand be canceled for failure to provide him with timely and accurate due process. He contends that the hearing on July 18, 2001 was untimely because it took place approximately eleven months after the issuance of the Notice and Demand and approximately eight months after he timely filed his petitions.

Petitioner's contention is rejected. The requirement for due process is fully met when a forum exists in which an aggrieved person, after notice, has the right to be heard (*Snyder v. Commonwealth of Massachusetts*, 291 US 97, 78 L Ed 674; *Twining v. State of New Jersey*, 211 US 78, 53 L Ed 97; *Metallic Flowers, Inc. v. The City of New York*, 4 AD2d 292, 164

NYS2d 227, *mod on other grounds* 5 NY2d 246, 183 NYS2d 801, *remittur denied* 6 NY2d 997, 191 NYS2d 976). In the instant matter, the proceedings in the Division of Tax Appeals commenced with petitioner's filing of the two petitions protesting the Notice and Demand on November 15, 2000 (*see*, Tax Law § 2008). On November 27, 2000, the Division of Tax Appeals acknowledged that the petitions were in proper form. At that time, the petitions were forwarded to the Division's Office of Counsel for preparation of an answer. The Division timely submitted the Answer on January 11, 2001 (*see*, 20 NYCRR 3000.4[b][1]). On March 15, 2001, the Calendar Clerk of the Division of Tax Appeals notified the parties that the Division of Tax Appeals anticipated scheduling the hearing in July or August 2001 and advised them to set a mutually convenient date and location for the hearing during those months. The parties chose July 18, 2001 and Buffalo, respectively, for the date and location of the hearing. The hearing held on July 18, 2001 addressed the issues raised in both petitions. Inasmuch as petitioner was given a full opportunity to be heard on the date and location mutually agreed to by the parties, there is no denial of due process.

B. Tax Law § 616(a) provides, in pertinent part, as follows:

For taxable years beginning after nineteen hundred eighty-seven, a resident individual shall be allowed a New York exemption of one thousand dollars for each exemption for which he is entitled to a deduction for the taxable year under section one hundred fifty-one(c) of the Internal Revenue Code. . . .

20 NYCRR 116.1(a) provides, in pertinent part, as follows:

For taxable years beginning after 1987, a resident individual is allowed a New York exemption of \$1,000.00 for each dependent properly allowable to such individual under section 151(c) of the Internal Revenue Code. Such individual, or such individual's spouse, is not allowed a New York exemption for a personal exemption allowable under section 151(b) of the Internal Revenue Code.

C. In the instant case, on their 1997 Federal income tax return, petitioner and his wife each claimed a personal exemption, plus one dependent exemption was claimed for their son, for a total of three exemptions. On their 1997 New York State personal income tax return, petitioner and his wife claimed \$2,000.00 as the dependent exemption amount, which amount represents two dependent exemptions. There is no dispute that petitioner and his wife had only one child, a son, Brandon M. Chmiel. Therefore, petitioner was entitled to only one of the two exemptions claimed on his 1997 New York State personal income tax return (*see*, Tax Law § 616[a]; 20 NYCRR 116.1[a]). Accordingly, the Division properly disallowed one of the dependent exemptions, resulting in an additional tax due of \$44.00.

D. Petitioner's contention that the additional tax asserted in the Notice and Demand should be canceled because the Division failed to review its internal historical records and discover his mathematical error in a timely manner is rejected. Pursuant to Tax Law § 683(a), the Division has three years after a return is filed in which to assess tax. Petitioner and his wife filed their 1997 New York State personal income tax return on or about April 15, 1998; therefore, the Division had until April 15, 2001 in which to issue an assessment. The Notice and Demand was issued on August 11, 2000, within the three-year period allowed pursuant to Tax Law § 683(a).

E. Tax Law § 684(a) provides, in pertinent part: "If any amount of income tax is not paid on or before the last date prescribed in this article for payment, interest on such amount . . . shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted." Pursuant to Tax Law § 3008, the Commissioner of Taxation and Finance may abate all or part of interest owed on a final determination of tax due where the deficiency is attributable in whole or part to an unreasonable error or delay by an employee of

the Division in performing a ministerial or managerial act. This provision applies only if no significant aspect of the unreasonable error or delay can be attributable to the taxpayer involved.

F. In this case, the interest imposed on the tax deficiency is not a result of any error or delay by anyone in the Division. Petitioner and his spouse filed their 1997 income tax return on or about April 15, 1998. On that return, they claimed two dependent exemptions. However, unlike the Federal income tax return, the New York State personal income tax return does not require the individuals claimed as dependent exemptions to be identified. Therefore, the Division was not aware of petitioner's error in claiming two New York dependent exemptions until it received information from the IRS. That information then had to be compared with petitioner's actual tax return and the tax due from petitioner had to be calculated based on the IRS information. This process was completed and a Notice and Demand for Payment of Tax Due was issued to petitioner and his spouse on August 11, 2000. The time it took for these events to occur, about two years and four months, is not unreasonable under the circumstances. With respect to petitioner's contention that the Division erred in failing to review its historical internal records to ascertain the correct number of dependents for which petitioner and his wife could claim an exemption on their 1997 tax return, it is without merit. Since the composition of a taxpayer's household can change from one year to the next, the Division's review of its historic internal records would not have allowed it to ascertain the proper number of dependent exemptions that petitioner was entitled to claim in 1997. The interest imposed on the additional tax determined to be due in this matter is mandated by Tax Law § 684(a), and there are no grounds for abating interest.

G. The petition of Mark J. Chmiel is denied, and the Notice and Demand for Payment of Tax Due issued on August 11, 2000 is sustained.

DATED: Troy, New York  
April 25, 2002

/s/ Winifred M. Maloney  
ADMINISTRATIVE LAW JUDGE