

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ESTELLE CUGINI : DETERMINATION
for Redetermination of a Deficiency or for Refund of Gift : DTA NO. 819011
Tax under Article 26-A of the Tax Law for the Year 1998. :
:

Petitioner, Estelle Cugini, 15 Nixon Avenue, Staten Island, New York 10304, filed a petition for redetermination of a deficiency or for refund of gift tax under Article 26-A of the Tax Law for the year 1998.

A small claims hearing was held before James Hoefler, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York on January 23, 2004 at 10:45 A.M. Petitioner appeared by Marie Smith, her daughter. The Division of Taxation appeared by Mark F. Volk, Esq. (Hala Aly).

Since neither party herein elected to file a post-hearing brief, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

ISSUE

Whether interest charges imposed by the Division of Taxation on the additional tax it assessed against petitioner for the year at issue can be waived or abated.

FINDINGS OF FACT

1. On August 21, 1998, petitioner herein, Estelle Cugini, transferred by gift real property located at 15 Nixon Avenue, Staten Island, New York and 412 Saint Pauls Avenue, Staten

Island, New York to her two daughters. Petitioner retained a life estate in the 15 Nixon Avenue, Staten Island, New York property and she has continuously used this house as her personal residence since the transfer. On the date of transfer the property located at 15 Nixon Avenue, Staten Island, New York had a fair market value of \$225,000.00, while the property situated at 412 Saint Pauls Avenue, Staten Island, New York was valued at \$161,000.00.

2. On August 7, 2000, the Division of Taxation (“Division”) corresponded with petitioner indicating that information on file revealed that she had made a transfer of real property. The letter advised petitioner of the need to file a gift tax return for any year where the value of a gift exceeds \$10,000.00. The Division’s letter also requested that petitioner (i) submit a copy of her gift tax return for 1998, if one was filed; (ii) file a gift tax return for 1998, if one was due; or (iii) explain her reasons why the transfer of the two properties at issue were not gifts subject to tax.

3. On December 29, 2000, petitioner filed a New York State Gift Tax Return disclosing the gift of the two parcels of real property described in Finding of Fact 1, above. The gift tax return reported gross gifts of \$386,000.00 (\$225,000.00 + \$161,000.00) for the 1998 calendar year and, after subtracting the \$20,000.00 annual exclusion, taxable gifts totaled \$366,000.00. The \$12,800.00 of tax shown as due on the return was paid at the time the return was filed.

4. On March 2, 2001, the Division issued a Notice and Demand for Payment of Tax Due to petitioner assessing interest of \$1,753.80 and penalty of \$4,400.49, for a total due of \$6,154.29. The Division subsequently waived the penalty and, on June 1, 2001, petitioner paid an updated interest figure of \$1,785.75. In this proceeding petitioner seeks a refund of the interest that she paid in the sum of \$1,785.75.

SUMMARY OF PETITIONER'S POSITION

5. Petitioner's request for the waiver or abatement of interest charges is essentially based on the principles of fairness and equity. It is petitioner's position that the attorney who handled the transfer of the two properties never advised her of the need to file a gift tax return and that it took the Division almost two years after the transfers to advise her of the necessity to file a return. Petitioner, now 86 years old, points to a long history of timely filing income tax returns as evidence of her intent to obey and comply with the provisions of the Tax Law. Furthermore, petitioner notes that her husband, who died in 1998, worked three jobs so that he could purchase the properties in question and that they also cared for a severely brain-damaged child for more than 50 years until her death in 1999. Petitioner argues that had she been properly advised of the requirement to file a gift tax return, she would have filed the return and paid the tax due in a timely manner. Petitioner believes that it is unfair and inequitable, given the facts of this case, to hold her liable for the payment of interest, especially when one considers that the gift tax provisions contained in Article 26-A were repealed effective January 1, 2000 (L 1997, ch 389, pt. A, § 7).

CONCLUSIONS OF LAW

A. Tax Law former § 1007(b)(1) provides that the procedural provisions of Article 22 of the Tax Law relating to, *inter alia*, the imposition of interest, shall apply to Article 26-A of the Tax Law in the same manner and with the same force and effect as if those provisions of Article 22 had been fully incorporated into Article 26-A.

B. Section 684(a) of Article 22 of the Tax Law, entitled "Interest on underpayment," provides that "If any amount of income tax is not paid on or before the last date prescribed in

this article for payment [in this case April 15, 1999], interest on such amount . . . shall be paid for the period from such last date to the date paid. . . .”

While it is unfortunate that petitioner’s attorney handling the real property transfers may not have advised her of the need to file a gift tax return, such events do not relieve her from the duty of payment of the interest due. Moreover, I am unaware of any precedent which would support petitioner’s position that the Division had a duty and responsibility to inform her of the need to file the gift tax return in a time span shorter than the two years that it actually took. While I am sympathetic to petitioner’s plight, there is simply no basis in the Tax Law or regulations to support the waiver or abatement of interest. It must be noted that it is petitioner’s responsibility to file a correct and accurate tax return and to remit the proper tax due in a timely manner and this she simply did not do.

B. By requesting that a portion of the interest charge be abated, petitioner, in essence, seeks an interest-free loan from the State of New York. As noted by the Tribunal in *Matter of Rizzo* (Tax Appeals Tribunal, May 13, 1993):

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. . . . It is not proper to describe interest as substantial prejudice, as it is applied to all taxpayers who fail to remit . . . tax due in a timely manner. Rather, a more accurate interpretation would be to say that interest represents the cost to the taxpayer for the use of the funds. . . .

If interest charges were routinely waived or abated, there would be little or no incentive for a taxpayer to remit the proper tax due since he or she would have the use of the State’s funds interest-free. In fact, such a practice or policy would promote and encourage taxpayers not to remit the proper tax due and reward them for such actions.

C. The petition of Estelle Cugini is denied and the Notice and Demand for Payment of Tax Due dated March 2, 2001 is, as modified by the Division's agreement to waive penalty, sustained.

DATED: Troy, New York
April 1, 2004

/s/ James Hoefler
PRESIDING OFFICER