STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ABDYL AND VIVIAN KOPRENCKA	:	
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 New York City Administrative Code for the Year 2000.	:	DETERMINATION DTA NO. 819407

Petitioners, Abdyl and Vivian Koprencka, 14-03 155th Street, Whitestone, New York 11357, 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 New York City Administrative Code for the year 2000.

A small claims hearing was held before Frank W. Barrie, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on July 13, 2004 at 1:15 P.M., which date began the three-month period for the issuance of this determination since neither party elected to reserve time to file a post-hearing brief. Petitioner Abdyl Koprencka appeared *pro se* and on behalf of his wife. The Division of Taxation appeared by Mark F. Volk, Esq. (Susan L. Parker).

ISSUE

Whether petitioners have proven that they made an estimated tax payment of $2,500.00 towards their 2000 New York State and City personal income tax liability.

FINDINGS OF FACT

1. Petitioners filed their New York personal income tax return (form IT-201) for 2000 on September 14, 2001. On their return, they reported New York adjusted gross income of $134,487.00 and New York taxable income of $97,756.00. They calculated total New York State and City tax due for 2000 of $9,929.00, consisting of New York State tax of $6,450.00 and New York City resident tax of $3,479.00. Against tax computed due of $9,929.00, they showed credits and payments totaling $4,265.00 consisting of the following:

City of New York school tax credit	$ 85.00
New York State tax withheld	1,005.00
City of New York tax withheld	675.00
Estimated tax payment	2,500.00
Total	$ 4,265.00

With their tax return, petitioners remitted payment in the amount of $5,664.00 ($9,929.00 less $4,265.00).

2. The Division of Taxation ("Division") issued a Notice and Demand for Payment of Tax Due dated February 1, 2002 against petitioners asserting tax due of $2,500.00 plus penalty (for late filing and payment) and interest. The notice shows that the Division rejected petitioners' claim that they had made an estimated tax payment of $2,500.00.

3. Petitioners contend that they filed a timely Application for Automatic Extension of Time to File for Individuals (IT-370) with the remittance of estimated tax due of $2,500.00. The Division maintains that it never received such application or the remittance of estimated tax due of $2,500.00.

4. Mr. Koprencka wrote a check number 2245 in the amount of $2,500.00 on his Bank of New York checking account which cleared his account on May 15, 2001. However, his checking account statement shows that on May 16, 2001 an "NSF check reversal" in the amount of $2,500.00 and an "NSF Service Charge" in the amount of $25.00 were applied to his checking account. Approximately, two months later, by a check number 2291, Mr. Koprencka made a payment of $2,515.00 to the New York City Department of Finance.

5. In addition to W-2 income during 2000 from three different employers, (i) The 20 West 84 Condominium c/o TKR Property Services, Inc., (ii) Comfort Maintence Corp c/o George Comfort & Sons, Inc., and (iii) St Quality Maint. Ltd, Mr. Koprencka reported a loss of $25,477.00 from his travel agency business, Queens Albanian Center, conducted as a sole proprietorship, which had gross receipts or sales of $265,226.00.

6. Subsequent to the Division's issuance of the Notice and Demand dated February 1, 2002, petitioners remitted payment of tax plus penalty and most of the interest asserted due. According to the Division, only a small amount of accrued interest remains due.

CONCLUSIONS OF LAW

A. The record is clear that petitioners never made an estimated tax payment of $2,500.00 on their 2000 New York State and City personal income tax liability. There can be no denial that a check in that amount was returned for insufficient funds. Petitioners' contention that "NSF" means New York State Finance is farfetched and merely muddles the primary fact that the payment was *not* made to the State.[1] Moreover, Mr. Koprencka has conceded that his

[1] Mr. Koprencka's checking account statement uses this abbreviation "NSF" next to an entry where a service charge of $25.00 has been imposed which conclusively demonstrates that this abbreviation stands for nonsufficient funds and not some bank code for New York State Finance, which is not even a proper way to reference the New York State Department of Taxation and Finance. Since Mr. Koprencka appears to be an intelligent businessman, who operates a business with receipts of $265,226.00, it strains credulity for him to assert that "NSF" is a reference to the Tax Department.

subsequent check in the amount of $2,515.00 was remitted to the City of New York. Therefore, it is undeniable that a $2,500.00 estimated payment on petitioners' 2000 New York State and City income tax liability was never made. Consequently, the Notice and Demand properly asserted tax due of $2,500.00 against petitioners.

B. Petitioners' argument that they filed extensions of time to file their 2000 income tax return is also rejected. First, in order to obtain an extension of time to file, the properly estimated amount of tax liability on an Application for Automatic Extension of Time to File for Individuals (IT-370) must be accompanied by a full remittance of the properly estimated tax due, which, as noted in Conclusion of Law "A" did not occur. Further, petitioners conceded that they have no proof of filing, by registered or certified mail, an IT-370 with the Division, which would have provided them with a four-month extension of time until *August 15, 2001*. In addition, there is no proof of filing of a form IT-372 to obtain even more time, which given the late filing on *September 14*, 2001 as noted in Finding of Fact "1", would have been necessary. The testimony of Mr. Koprencka is insufficient to meet the burden of proving that petitioners filed such extensions (***see***, ***Matter of Seguin***, Tax Appeals Tribunal, October 22, 1992 [which confirmed the determination of the administrative law judge who relied upon the reasoning of the United States Tax Court in ***Wood v. Commissioner*** [41 TC 593, ***affd*** 338 F2d 602]). In ***Wood (supra)***, the Tax Court observed:

> [U]nless taxpayers are held to strict proof of compliance with the statute and regulations, the temptation would be great to conveniently misplace the sender's receipt for certified mail and attempt to prove by virtually uncontestable oral testimony of the sender, who would in most cases be prejudiced, that the receipt was postmarked on time.

Here, petitioners have even less of a case since they conceded, as noted above, that they did not mail the extensions by certified or registered mail. Consequently, it is concluded that their return filed on September 14, 2001 was filed late.

C. Turning to the matter of the imposition of penalty and interest, it is noted that pursuant to Tax Law § 685(a)(1) and (2), penalties for late filing and late payment may be abated if a taxpayer is able to show that the failure to timely file and pay was due to reasonable cause and not due to willful neglect. However, the Tax Appeals Tribunal has noted that, in the first instance, the imposition of penalty is mandatory and not discretionary on the part of the Division:

> By first requiring the imposition of penalties (rather than merely allowing them at the commissioner's discretion), the legislature evidenced its intent that filing returns and paying tax according to a particular timetable be treated as a largely unavoidable obligation [citation omitted] (***Matter of MCI Telecommunications Corp.***, Tax Appeals Tribunal, January 16, 1992, ***confirmed*** 193 AD2d 978, 598 NYS2d 360).

Given the fact that petitioners failed to file a timely return and pay their 2000 New York income tax, penalties for late filing and late payment were, in the first instance, properly imposed.

D. The analysis therefore shifts to whether petitioners have established that their failure to timely file and pay was due to reasonable cause and not due to willful neglect. Petitioners' argument that the State was somehow responsible for their remittance to the City Finance Department is rejected for lack of proof and cannot form a basis to conclude they had reasonable cause for their failure to timely file and pay (***cf.***, ***McKee v. Commissioner***, 2AD3d 1077, 768 NYS2d 677 [wherein the court treated a Notice and Demand as presumably correct and held that the taxpayer had failed to prove the notice was erroneous by clear and convincing evidence]). Furthermore, the Division correctly points out that it is likely that the $2,515.00 received and credited by the City of New York was in payment of the City unincorporated business tax

liability of Mr. Koprencka's travel agency and was not, in fact, meant to be a payment of petitioners' 2000 New York State and City *income* tax. The photocopy of such check, included in the petition, showed "Dept of Finance, City of New York *Business/Excise Tax* [emphasis added]" stamped on the back.

E. The petition of Abdyl and Vivian Koprencka is denied, and the Notice and Demand dated February 1, 2002 is sustained.

DATED: Troy, New York
September 30, 2004

/s/ Frank W. Barrie
PRESIDING OFFICER