

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOAN A. TRUMAN	:	SMALL CLAIMS
	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 820525
Personal Income Taxes under Article 22 of the Tax Law	:	
and the New York City Administrative Code for the Year	:	
1989 and for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29 of the	:	
Tax Law for the Period December 1, 1995 through	:	
November 30, 1996.	:	

Petitioner, Joan A. Truman, 145-42 115th Avenue, Jamaica, New York 11436, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the year 1989 and for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1995 through November 30, 1996.

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 March 15, 2006 at 2:45 P.M., with all additional documents to be submitted by August 1, 2006, which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Jacob Tiwary).

ISSUES

I. Whether the Division of Taxation properly calculated interest due on a refund allowed petitioner as a result of a prior settlement that culminated in a stipulation of discontinuance.

II. Whether petitioner may reopen a prior settlement involving her personal income tax liability for 1989 so as to claim a larger refund.

III. Whether the Division of Tax Appeals has authority to address petitioner's claim that she suffered damages as a result of the Division of Taxation's ruining her creditworthiness.

FINDINGS OF FACT

1. Petitioner, Joan A. Truman, filed an earlier petition dated April 6, 2004 which contested the following three notices: Notice No. L007638023, Notice D8909186037 and Notice D8912194300. This earlier petition which was assigned DTA No. 819968 was resolved by a stipulation for discontinuance of proceeding dated September 14, 2004.¹ Pursuant to this stipulation, petitioner and the Division of Taxation ("Division") agreed to a refund of \$200.00 of tax paid on Notice L007638023 and that the other two notices were "closed (full paid)."

2. Notice L007638023, issued on July 23, 1993, had asserted income tax due of \$339.20 plus penalty and interest against petitioner based upon information received by the State of New York from the Internal Revenue Service. By the stipulation dated September 14, 2004, the Division agreed to refund \$200.00 of tax paid on this notice plus interest from the dates it received payments on the notice. Such payments occurred when the Division made an offset against a refund claim filed by petitioner and when a check was tendered on behalf of petitioner as follows: (i) \$121.84 was collected by the Division pursuant to an offset of petitioner's refund for the tax year 1995 and was deemed paid on August 6, 1998; and (ii) \$200.31 was paid by petitioner's title insurance company on her behalf and was deemed paid on May 15, 1997.

¹ The record includes two copies of a stipulation of discontinuance of proceeding with regard to this earlier matter. Both show the date of September 14, 2004 next to the signature of Attorney Susan Hutchison, the Division of Taxation's representative. The copy submitted by the Division into evidence shows the date of September 14, 2004 next to petitioner's signature while the copy presented by petitioner shows the date of September 17, 2004 next to petitioner's signature. There is no explanation in the record for this variance, but the pivotal fact is that petitioner does not deny signing the stipulation of discontinuance.

3. The Division paid petitioner the stipulated refund of \$200.00 plus interest by the issuance of two checks by the Division both dated January 8, 2005 as follows: (i) A check in the amount of \$179.81 representing the \$121.84 collected by the Division pursuant to the offset noted above plus interest of \$57.97 computed from the date of the offset; and (ii) A check in the amount of \$130.73 representing the balance due on the refund of \$80.58 (the agreed upon refund of \$200.00 less \$121.84 equals \$78.16²) plus interest of \$50.15 computed from May 15, 1997, the date of payment by petitioner's title insurance company on petitioner's behalf noted above.

4. In addition to resolving Notice L007638023, the Division's representative in the earlier matter cancelled the following four sales tax assessments against petitioner: L013406108, L013078725, L012798824 and L012415559. The representative also vacated the warrant that had been docketed to enforce collection on these assessments. Each of these sales tax assessments asserted tax due of \$100.00 plus penalty of \$100.00 and interest. Consequently, as of April 15, 2005, the date on which the petition in the matter at hand was filed, petitioner had no open assessments with the Division.

5. Petitioner was evicted from her home in Rosedale³ (Borough of Queens) in December of 1998 as the result of a proceeding brought by Better Homes Depot, Inc., which had purchased petitioner's Rosedale home for \$207,500.00⁴ at a foreclosure sale on July 15, 1998. Petitioner blames this misfortune on the Division of Taxation which she asserts ruined her

² There is no explanation in the record why the Division's processing system calculated a tax refund \$2.42 higher than the agreed upon tax amount in the stipulation. Consequently, the Division refunded petitioner more tax than agreed upon by the stipulation.

³ Some documents in the record refer to the location in Queens as Springfield Gardens.

⁴ Petitioner's mortgage dated November 19, 1986 was in the amount of \$120,000.00.

creditworthiness. She seeks monetary damages of approximately \$30,000.00 against the Division of Taxation.

CONCLUSIONS OF LAW

A. As noted in Finding of Fact “1”, petitioner and the Division of Taxation resolved an earlier matter which addressed the same statutory notices underlying the petition at hand. The Division’s position that Tax Law § 171 imposes a *strict standard* for determining whether to reopen a closed matter is correct. The stipulation of discontinuance noted in Finding of Fact “1” is properly treated as final and conclusive, in the language of this statutory provision, “except upon a showing of fraud, malfeasance, or misrepresentation of a material fact.” Petitioner has made no such showing and therefore her petition under review herein must be dismissed (*cf.*, ***Matter of D & C Glass Corp.***, Tax Appeals Tribunal, June 11, 1992 [wherein the Tribunal noted that the finality of proceedings requires a strict view of attempts by either petitioners or the Division to reopen or to reargue matters which have been closed]).

B. Moreover, petitioner is seeking a sizeable monetary remedy for what she contends was the result of the Division’s ruining her creditworthiness. She argues that the Division wrongly imposed a lien on her Rosedale property to collect income tax asserted due of \$339.20, which apparently impeded her ability to seek refinancing and thereby resulted in the foreclosure. Such claim, passionately asserted by petitioner, simply does not come within the *jurisdiction* of the Division of Tax Appeals which is limited by statute. Rather, Tax Law § 3034, which provides for civil damages for certain unauthorized collection actions, and Tax Law § 3032, which provides for civil damages for failure to release a lien, specify that such civil actions are to be maintained in the Court of Claims.

C. With regard to the amount of interest paid by the Division on the stipulated refund, Tax Law § 688(a)(1) provides that interest on an overpayment shall accrue from “the date of the overpayment.” The Division did just so, as detailed in Finding of Fact “3”, and as a result, it is concluded that the Division properly calculated interest due on the stipulated refund of \$200.00.

D. The petition of Joan A. Truman filed on April 15, 2005 is denied.

DATED: Troy, New York
September 7, 2006

/s/ Frank W. Barrie
PRESIDING OFFICER