

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**KATHLEEN DUNN** : DETERMINATION  
for Redetermination of a Deficiency or for Refund : DTA NO. 822970  
of New York State and City Personal Income Tax :  
under Article 22 of the Tax Law and the New York :  
City Administrative Code for the Year 2004. :  
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Petitioner, Kathleen Dunn, filed a petition for redetermination of a deficiency or for refund of New York State and City personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 2004.

On July 27, 2009 and July 29, 2009, respectively, the Division of Taxation, appearing by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel) and petitioner, appearing pro se, waived a hearing and agreed to submit this matter for determination based on documents and briefs to be submitted by December 18, 2009, which date began the six-month period for issuance of this determination. After due consideration of the evidence and arguments submitted, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner is liable for the payment of interest.

***FINDINGS OF FACT***

1. Petitioner, Kathleen Dunn, timely filed her 2004 New York State personal income tax return, form IT-201, claiming a refund of \$184.17. Petitioner claimed, as part of her itemized

deductions, a tax deduction in the amount of \$8,768.91 on line 2 of the attached Itemized Deduction and Other Taxes and Tax Credits, form IT-201-ATT.

2. On May 20, 2005, the New York State Department of Taxation and Finance issued to petitioner a refund check in the amount of \$184.17.

3. On February 1, 2008, the Division of Taxation (Division) issued to petitioner a Statement of Proposed Audit Changes indicating additional tax due of \$164.00, plus interest. The statement provided the following explanation:

Based on an exchange of information agreement between New York State and the Internal Revenue Service, we have received from the IRS, the amounts shown on your 2004 federal tax return. The adjustments listed below are differences we found when we compared the federal information with your 2004 New York return. . . .

To compute the correct amount of New York itemized deductions shown on line 34 of the 2004 New York return, Form IT-201 and on line 16 of Form IT-201-ATT, Itemized Deduction and Other Credits and Taxes, you must subtract the amount of state and local income taxes you claimed on line 5 of your federal Schedule A from the total federal itemized deductions shown on line 8 of your New York State Form IT-201-ATT.

Since the amount of state and local taxes reported on line 9 of Form IT-201-ATT does not equal the amount shown on line 5 of federal Schedule A, we adjusted for the difference.

Due to the time required to obtain and process the federal information, we could not issue the Statement of Audit Changes before this date.

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Interest is required by section 684(a) of the New York Tax Law.

The statement indicated an adjustment to New York taxable income of \$2,230.00.

4. Petitioner's federal Schedule A - Itemized Deductions for the year 2004 indicated on line 5 state and local income taxes paid of \$2,230.67.

5. On March 27, 2008, the Division issued to petitioner a Notice of Deficiency asserting personal income tax due for the year 2004 of \$164.00, plus interest.

6. On February 5, 2008, petitioner paid to the Division the tax amount asserted to be due by the Notice of Deficiency in the amount of \$164.00.

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

A. Tax Law § 684 provides that,

[I]f 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, 2005], 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.

Petitioner has presented no evidence to support an abatement of interest. By requesting that the interest charges be abated, petitioner, in essence, seeks an interest-free loan from the State of New York. As noted by the Tribunal in the *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. . . .

B. Tax Law § 3008(a) does provide for the abatement of interest attributable to certain unreasonable errors or delays by the Division. The application of this provision is limited, however, to unreasonable errors or delays by Division employees in performing “ministerial or managerial” acts, and only if no significant aspect of the unreasonable error or delay can be

attributed to the taxpayer involved. Petitioner has neither alleged nor proven any unreasonable errors or delays by the Division.

C. The petition of Kathleen Dunn is denied and the Notice of Deficiency dated March 27, 2008 is sustained.

DATED: Troy, New York  
May 13, 2010

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE