

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ANTHONY J. and MAUREEN K. BEREJKA

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Year 1980.

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Petitioners, Anthony J. and Maureen K. Berejka, Watch Way, R.D. #1, Huntington, New York 11743, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1980 (File No. 50038).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1986 at 10:55 A.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether the Audit Division's imposition of interest on an income tax deficiency against petitioners was proper.

#### FINDINGS OF FACT

1. Petitioners, Anthony J. and Maureen K. Berejka, timely filed a joint New York State Income Tax Resident Return for the year 1980. According to a statement attached to their return, petitioners reported their total income tax due, after accounting for taxes withheld, to be \$110.80. A check in that amount **was** enclosed with the return.

2. On August 12, 1981 the Audit Division issued to petitioners a Notice of Tax Due asserting income tax due for the year 1980 in the amount of \$4,949.80 including penalty and interest.

3. By letter dated August 31, 1981 Mr. Berejka questioned the Audit Division's assertion and requested an explanation of how the additional tax due had been calculated. On May 17, 1982 the Audit Division replied to Mr. Berejka's inquiry and requested additional information from Mr. Berejka in order to complete the Audit Division's review of petitioners' return. Mr. Berejka responded to the Audit Division's request for additional information by letters dated August 19, 1982 and September 3, 1982.

4. Based on the additional information submitted by Mr. Berejka the Audit Division issued to petitioners a Statement of Audit Changes dated January 19, 1983 for the year at issue asserting income tax due in the amount of \$3,122.61 together with interest of \$703.41 for a total due of \$3,824.02. The Statement of Audit Changes also explained that the Notice of Tax Due previously issued to petitioners had been cancelled; that the penalty previously asserted therein had been cancelled; and further explained the Audit Division's basis for the issuance of the Statement of Audit Changes.

5. On February 11, 1983 petitioners paid the tax asserted by the Audit Division, but not the interest. In a letter accompanying his payment Mr. Berejka protested the Audit Division's imposition of interest on the tax due.

6. By letter dated June 6, 1983 the Audit Division advised petitioners that the Tax Law makes no provision for the waiver of interest imposed on income tax not paid on or before the due date of a tax return, and further advised petitioners that a Notice of Deficiency would be issued in the event that the amount in issue was not paid.

7. On August 3, 1983 the Audit Division issued a Notice of Deficiency to petitioners asserting \$732.60 in interest due. The interest imposed was based **upon the** additional income tax of \$3,122.61 which was paid by petitioners on February 11, 1983.

8. In response to further inquiries from Mr. Berejka, the Audit Division, by letter dated July 12, 1984, explained the manner in which it had calculated the interest in issue and again explained its position regarding waiver of such interest.

9. At the hearing Mr. Berejka admitted liability for the additional income tax underlying the interest at issue. In addition he did not dispute the Audit Division's position that the Tax Law does not provide for waiver of interest. Mr. Berejka contended that notwithstanding the lack of a provision in the Tax Law allowing for waiver of interest, the Audit Division nonetheless had no right to impose interest in this case because it had needlessly and carelessly prolonged the matters at issue herein by failing to adequately respond to his inquiries in a timely and effective manner.

#### CONCLUSIONS OF LAW

A. That section 684 of the Tax Law provides for the imposition of interest on any amount of income tax not paid on or before the date prescribed for payment. The interest at issue herein was, therefore, properly imposed by the Audit Division.

B. That Article 22 of the Tax Law makes no provision for the suspension, waiver or abatement of interest properly imposed.

C. That petitioners' assertion that the Audit Division unnecessarily prolonged this matter is tantamount to a claim of estoppel on the ground of laches. "Laches... may not be imputed to the State in the absence of statutory


authority (citations omitted). This rule **is** generally applied in connection with tax matters (citations omitted)." Matter of Jamestown Lodge 1681 Loyal Order of Moose, Inc. (Catherwood), 31 A.D.2d 981 (3rd Dept. 1969).

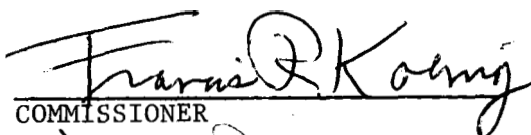
D. That the petition **of** Anthony J. and Maureen K. Berejka is denied and the Notice **of** Deficiency dated August 3, 1983 **is** sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 28 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER