

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

THOMAS J. CARLEY

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1977, 1978, 1979, :  
1980, 1981 and 1982.

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Petitioner, Thomas J. Carley, 159 Princeton Road, Rockville Center, New York 11570, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1977, 1978, 1979, 1980, 1981 and 1982 (File No. 54170).

A hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 14, 1986 at 1:45 P.M., with all briefs to be submitted by November 6, 1986. Petitioner appeared **pro se**. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether the New York State Tax Law is constitutional.

FINDINGS OF FACT

1. Thomas J. Carley (hereinafter "petitioner") filed a New York State Income Tax Resident Return for each of the years 1977 and 1978. On his 1977 return petitioner reported total New York income of \$2,691.00. On his 1978 return he reported total New York income of \$8,327.00. Both returns were filed solely in the name of petitioner and bore only his signature. The filing status claimed for 1977 was "Married filing separately on one Return". The

filing status claimed for 1978 was "Married filing separate Returns (on separate Forms)". On both returns petitioner claimed the standard deduction and twelve exemptions. His tax liability was computed to be zero on each return.

2. Petitioner did not file a New York State personal income tax return for any of the years 1979, 1980, 1981 or 1982.

3. When the Audit Division attempted to conduct an audit, petitioner was totally uncooperative. He failed to respond to the appointment letters sent to him and failed to answer telephone calls from the Audit Division. Because of this lack of cooperation, the Audit Division had no books, records or documentation from which it could conduct a direct audit. Accordingly, an indirect audit method had to be used.

4. On April 6, 1984, the Audit Division issued three statements of audit changes to petitioner. The three statements, which covered all years at issue herein, included an adjustment for each of the aforesaid years for "income omitted" of \$50,000.00. The statement issued with respect to the years 1977 and 1978 disallowed all but one exemption and adjusted petitioner's claimed standard deduction. The statement issued for the years 1979, 1980 and 1981 and the statement issued for 1982 allowed petitioner one exemption and a proportionate share of the standard deduction based on a filing status of "Married filing separate Returns (on separate Forms)" which was the filing status claimed on petitioner's 1978 return.

5. Based on the aforesaid statements, two notices of deficiency were issued against petitioner on April 6, 1984, as follows:

(1)

<u>Years</u>	<u>Deficiency</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1977	\$ 5,966.15	\$ 298.31	\$ 3,745.44	\$10,009.90
1978	6,731.55	336.58	3,621.34	10,689.47

1979	5,294.00	2,966.33	2,372.44	10,632.77
1980	<u>5,287.00</u>	<u>2,645.20</u>	<u>1,894.37</u>	<u>9,826.57</u>
	\$23,278.70	\$6,246.42	\$11,633.59	\$41,158.71

(2)

<del>Years</del>	<u>Deficiency</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1981	\$5,287.00	\$2,602.01	\$1,215.89	\$ 9,104.90
1982	<u>5,273.00</u>	<u>2,278.74</u>	<u>491.26</u>	<u>8,043.00</u>
	\$10,560.00	\$4,380.75	\$1,707.15	\$17,147.90

6. The penalties asserted for 1977 and 1978 were for negligence, pursuant to section 685(b) of the Tax Law. The penalties asserted for 1979, 1980, 1981 and 1982 were for failure to file a return, failure to pay the tax, negligence and failure to file a declaration of estimated tax, pursuant to sections 685(a)(1), 685(a)(2), 685(b) and 685(c) of the Tax Law, respectively.

7. The adjustments for "income omitted" were determined based on an outside inspection of petitioner's home and the fact that he was a lawyer in private practice handling tax litigation.

8. At the hearing petitioner failed to submit any evidence relating to the facts and declined to present oral testimony or oral argument. Instead, he opted to present his position through a brief and reply submitted subsequent to the hearing.

9. Petitioner has made the constitutionality of the New York State Tax Law the central issue in this matter. His arguments in his brief include, inter alia, that:

a. Article 22 gives **no** definition for either "petitioner", "taxpayer" or "income". Accordingly, there is no petitioner, taxpayer or income included in this matter.

b. The State Tax Commission can only hear a case when there **is** a petitioner as defined by law and a taxpayer as defined by law. Therefore, the State Tax Commission has **no** jurisdiction in this or any other proceeding concerning Article 22.

10. Petitioner's grounds for relief, as stated in each separate petition filed for the years at issue, are as follows:

"I am not liable for any deficiency, tax, penalty, and/or interest as asserted herein against me (tax, etc.).

There is **no** New York State ("State") law or statute imposing the tax, etc., or liability therefor on me for the year involved herein.

There is **no** United States ("Federal") law or statute imposing any tax or liability therefor on me for the year involved herein.

I neither had, nor was I, during the year involved herein:

Income  
Income Omitted  
New York Taxable Income  
Unreported Income  
Adjusted Gross Income  
Taxable Income

The so-called New York State personal income tax is unconstitutional and void --

11. Petitioner brought a motion for declaratory judgment on the same issues of constitutionality and the meaning of terms in this very same case making the same arguments and was told by the Court that his arguments were without merit and that he failed to meet his burden **of** proof. (Carley v. State of New York and New York State Dept. of Taxation and Finance, Supreme Ct, Nassau County, Feb. 21, 1986, Roberto, J.). Accordingly, petitioner's motion was denied.

12. Petitioner was involved in a number of Federal tax cases, either **representing taxpayers, some of whose tax returns he had prepared, or as a plaintiff-appellee appearing pro se.** In the latter case, United States of America v. Carley, No. 85-6099 (2nd Cir. Feb. 13, 1986), the Court cited cases in which the petitioner represented taxpayers in litigation where in each case, as in his own Federal case, he raised the same frivolous arguments as to constitutionality of the tax laws (the Internal Revenue Code in the Federal cases). In

each case the ruling was against petitioner or those he represented, and in some cases sanctions were imposed for bringing frivolous actions.

CONCLUSIONS OF LAW


A. That the constitutionality of the Tax Law is presumed at the administrative level of the State Tax Commission.

B. That the petition of Thomas J. Carley is denied and the two notices of deficiency issued April 6, 1984 are sustained together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER