

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

SHELDON BASHINSKY AND DOLORES BASHINSKY

DECISION

for Redetermination of a Deficiency or for  
Refund of New York State Personal Income Tax  
under Article 22 of the Tax Law and New York :  
City Personal Income Tax under Chapter 46,  
Title T of the Administrative Code of the City :  
of New York for the Year 1980.

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Petitioners, Sheldon Bashinsky and Dolores Bashinsky, 1145 East 72nd Street, Brooklyn, New York 11234, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1980 (File No. 64058).

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 January 28, 1987 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

#### ISSUE

Whether penalties imposed against petitioners for failure to timely file their 1980 return were proper.

#### FINDINGS OF FACT

1. On March 29, 1984, Sheldon Bashinsky and Dolores Bashinsky (hereinafter "petitioners") filed a Claim for Credit or Refund of Personal Income Tax for

the year 1980, wherein they claimed that they are properly entitled to a refund of \$428.32. Said amount represents the penalties imposed pursuant to section 685(a)(1) of the Tax Law and former section T46-185.0(a)(1) of the Administrative Code of the City of New York for failure to timely file a 1980 return.

2. On March 25, 1985, the Audit Division issued a notice of disallowance to Mr. Bashinsky advising him that the aforestated claim was disallowed in full.

3. Petitioners testified that they timely filed a New York State Income Tax Resident Return With City of New York Personal Income Tax for the year 1980.

4. The Audit Division has **no** record of such return being filed by petitioners. A return, which was purported to be a copy of their original return, was submitted by petitioners. Such return, which was undated and unsigned, was received by the Audit Division on January 6, 1983 and considered to be a late filed return.

5. On **April** 13, 1981, petitioners ffiled an Application for Automatic Extension (2 months) of Time to File their 1980 return.

6. Petitioners argued that they timely filed their 1980 return, on April 14, 1981 without payment of the total reported balance due of \$1,903.64. **Mrs.** Bashinsky testified that she didn't pay the New York State and City tax liability timely because she was waiting for receipt of her New Jersey refund, which she intended to use toward payment of the 1980 New **York** State and City liability.

7. Petitioners alleged that although they received their New Jersey refund within a couple of months of such filing, they forgot to pay their New York State and City tax liability from the New Jersey refund.

8. Subsequently, on December 30, 1982, petitioners paid their 1980 New York State and City balances due together with penalties imposed for failure to timely file their return and failure to timely pay the tax shown on the return.

CONCLUSIONS OF LAW

A. That the penalties imposed pursuant to section 685(a)(1) of the Tax Law and former section T46-185.0(a)(1) of the Administrative Code of the City of New York, are due and owing when a return is filed later than the prescribed date (determined with regard to any extension of time for filing) unless it is shown that such failure is due to reasonable cause and not due to willful neglect.


B. That petitioners have failed to sustain their burden of proof, imposed pursuant to section 689(e) of the Tax Law and former section T46-189.0(e) of the Administrative Code of the City of New York, to show that their 1980 return was timely filed or that if such return was late filed, it was due to reasonable cause rather than willful neglect.


C. That the petition of Sheldon Bashinsky and Dolores Bashinsky is denied and the notice of disallowance of their refund claim issued March 25, 1985 is sustained.

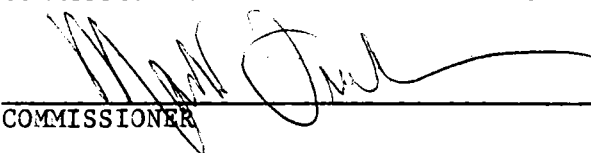
DATED: Albany, New York

STATE TAX COMMISSION

APR 23 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER