

STATE TAX COMMISSION

James R. Hayward
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 1, 1984

Bernard & Roslyn Mirotznik
602 Garden Lane
East Meadow, NY 11554

Dear Mr. & Mrs. Mirotznik:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BERNARD MIROTZNIK AND ROSLYN MIROTZNIK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1979.	:	

Petitioners, Bernard Mirotznik and Roslyn Mirotznik, 602 Garden Lane, East Meadow, New York 11554, 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 1979 (File No. 38778).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 5, 1983 at 2:45 P.M. Petitioner Bernard Mirotznik appeared pro se and for his wife. The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether petitioners are liable for a penalty under section 685(c) of the Tax Law for failure to file a declaration of estimated tax or underpayment of estimated tax.

FINDINGS OF FACT

1. Petitioners herein, Bernard Mirotznik and Roslyn Mirotznik, timely filed separate New York State income tax resident returns for the year 1979. Petitioner Roslyn Mirotznik also filed a 1979 New York City nonresident earnings tax return. Total New York State tax due shown on petitioner Bernard Mirotznik's

separate return was \$5,473.93, while the combined New York State and New York City tax due shown on Roslyn Mirotznik's return amounted to \$3,217.33.

2. For the year 1979 petitioner Bernard Mirotznik made no prepayments of tax. There was no withholding of tax from wages¹, nor did Mr. Mirotznik file and pay an estimated tax. The \$5,473.93 of New York State tax due shown on Mr. Mirotznik's 1979 return was paid in full with the filing of his return.

Petitioner Roslyn Mirotznik, for the year 1979, had a total of \$1,402.36 of New York State and New York City tax withheld from her wages and, after subtracting said amount from the tax computed to be due on her return (\$3,217.33), a balance remained due in the amount of \$1,814.97. The balance due from Mrs. Mirotznik of \$1,814.97 was not paid with the filing of her 1979 return.

3. On February 1, 1982, a warrant was jointly issued to petitioners for the year 1979 for the unpaid tax due shown on Mrs. Mirotznik's return (\$1,814.97). Included in the warrant was a charge for penalty in the amount of \$181.42 and interest in the amount of \$400.34. The penalty shown due on the aforementioned warrant was assessed pursuant to section 685(a)(3) of the Tax Law for failure to pay the tax required to be shown on the return.

4. On or about February 9, 1982 petitioners made full payment of the total tax, penalty and interest asserted due on the warrant dated February 1, 1982. On February 16, 1982, petitioners filed Form IT-113X, Claim for Credit or Refund of Personal Income Tax and/or Unincorporated Business Income Tax. Petitioners, on Form IT-113X, claimed a refund of \$581.76, said amount representing

¹ Bernard Mirotznik reported no wage income on his 1979 New York State income tax return, therefore, there could be no New York State tax withheld from wages.

the sum of the penalty (\$181.42) and interest (\$400.34) shown due on the warrant dated February 1, 1982. The Audit Division, on June 28, 1982, denied petitioners' claim for refund in its entirety. A petition for refund was thereafter timely filed by petitioners on July 27, 1982.

5. On October 28, 1981, the Audit Division issued to petitioners a Notice and Demand for Payment of Income Tax Due for the year 1979 assessing a penalty of \$332.34. Said penalty was asserted due pursuant to section 685(c) of the Tax Law for failure to file a declaration of estimated tax or underpayment of estimated tax. Petitioners have not yet paid the penalty asserted due in the Notice and Demand dated October 28, 1981.

6. At the hearing held herein petitioners conceded that they were not entitled to the refund of \$581.76 as requested in their claim for refund dated February 16, 1982. Petitioners did however, without objection from the Audit Division, amend their petition to contest the penalty asserted due in the Notice and Demand for Payment of Income Tax Due dated October 28, 1981 (see Finding of Fact "5", supra).

7. Petitioners contend that they are not subject to the section 685(c) penalty for failure to file a declaration of estimated tax or for underpayment of estimated tax due to the fact that, for the year at issue, a substantial portion of their income was derived from a real estate partnership and that it was difficult to determine their distributive share of partnership income until after the partnership books were closed.

Petitioners did not argue nor was any evidence presented to show that they met any of the statutory exceptions to the section 685(c) penalty as provided for in section 685(d) of the Tax Law.

CONCLUSIONS OF LAW

A. That section 685(c) of the Tax Law imposes an addition to tax for underpayment of estimated tax if any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax. That section 685(d) of the Tax Law provides for the exclusive exceptions to the section 685(c) penalty. That section 685(d) of the Tax Law contains no provision for the waiver or reduction of the section 685(c) penalty due to reasonable cause.

B. That petitioners have failed to sustain the burden of proof [Tax Law §689(e)] to show that they met any of the statutory exceptions to the section 685(c) penalty provided for in section 685(d) of the Tax Law. That even if petitioners had satisfactorily demonstrated a lack of intent to evade the tax and that reasonable cause existed for their failure to file and pay an estimated tax, there exists no waiver authority to which petitioners would be entitled.

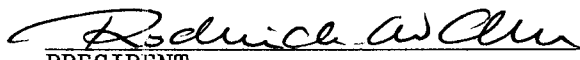
C. That pursuant to Finding of Fact "6", supra, petitioners concede that they are not entitled to a refund of \$581.76 as requested in their claim for refund dated February 16, 1982.

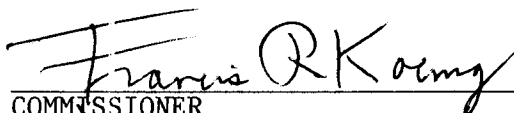
D. That the petition of Bernard Mirotznik and Roslyn Mirotznik is denied, and that the Notice and Demand for Payment of Income Tax Due dated October 28, 1981 and the denial of petitioners' claim for refund dated June 28, 1982 are both sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 01 1984


PRESIDENT


COMMISSIONER


COMMISSIONER