

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Harry W. (dec'd.) & Janet S. Bank : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1968.

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 17th day of January 1986, he served the within notice of Decision by certified mail upon Harry W. (dec'd.) & Janet S. Bank, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry W. (dec'd.) & Janet S. Bank
c/o Spindell, 5333 Collins Avenue
Apt. H 12-T
Miami Beach, Florida 33140

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of January, 1986.

David Parchuck

James A. Spindell

Authorized to administer oaths
pursuant to Tax Law section 174

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

January 17, 1986

Harry W. (dec'd.) & Janet S. Bank
c/o Spindell, 5333 Collins Avenue
Apt. H 12-T
Miami Beach, Florida 33140

Dear Mrs. Bank:

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) 690 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	:	
HARRY W. BANK (DECEASED) and JANET S. BANK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1968.	:	

Petitioners, Harry W. Bank (Deceased) and Janet S. Bank, c/o Spindell, Apartment #12-T, 5333 Collins Avenue, Miami Beach, Florida 33140, 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 1968 (File No. 50844).

On July 30, 1985, petitioners waived their right to a hearing and requested that a decision be rendered based on the entire record contained in the file. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUES

I. Whether the Tax Compliance Bureau accepted petitioner's offer in compromise by cashing her check offered in full payment of all tax liabilities for the year 1968.

II. Whether penalties and statutory interest asserted against petitioners should be cancelled.

FINDINGS OF FACT

1. On November 7, 1983, a Statement of Audit Changes was issued to petitioners proposing personal income tax due for the year 1968 of \$15,573.63, plus penalties of \$3,893.41 pursuant to section 685(a) of the Tax Law and \$436.06 pursuant to section 685(c) of the Tax Law and statutory interest. The

statement explained that a search of the Audit Division's files failed to recover a New York State tax return for 1968, and petitioners were unable to substantiate that a return was filed; consequently, tax liability was estimated on the basis of federal documents provided by petitioner, Janet S. Bank¹.

Those documents reveal that, as a result of an audit, the Internal Revenue Service determined the petitioners' 1968 federal taxable income to be \$121,704.48. Accordingly, on January 5, 1984, the Audit Division issued a Notice of Deficiency against petitioners asserting tax due of \$15,573.63, penalties of \$4,329.47 and interest of \$16,529.34 for a total due of \$36,432.44.

2. On January 13, 1984, the Tax Compliance Bureau received petitioner's certified check in the amount of \$15,573.63 and a letter stating, in pertinent part, "I respectfully request that you accept this check for this horrendous sum of money in full settlement of this assessment." Also enclosed was a partially completed form DTF-107, Offer in Compromise. Petitioner had checked a box on the form which instructed the Tax Compliance Bureau to return the amount offered in compromise if the compromise was rejected. The petitioner submitted no proof of her financial status. The Tax Compliance Bureau immediately negotiated petitioner's check and credited \$15,573.63 to the total liability asserted.

3. The partially completed form DTF-107 was returned to the petitioner on or about January 18, 1984 with a letter explaining that her offer in compromise would not be considered until all sections of the form were completed. Petitioner

1 Harry W. Bank died before the Notice of Deficiency was issued. Although the tax liability was asserted against both husband and wife, this petition was brought by Janet S. Bank as the surviving spouse. Hereinafter, all references to petitioner refer solely to her.

never provided the information requested since she maintained that negotiation of her check constituted an acceptance of her offer in compromise and made completion of the form unnecessary.

4. Before the death of her husband, petitioner was not involved in the preparation of their joint income tax returns and had little knowledge of the family's finances. At her husband's request, she signed blank tax returns and trusted him to accurately prepare and file them. Petitioner nursed her husband through a long and debilitating illness, during which time financial records were scattered and eventually lost.

5. Petitioner's federal adjusted gross income in 1983, the year in which she made an offer in compromise, was \$14,473.00.

CONCLUSIONS OF LAW

A. That the rules generally applicable to accords and satisfaction do not apply to a compromise or settlement of taxes. In order to effectuate a compromise of tax liability, the offer in compromise must conform to the statutory requirements of the Tax Law (Colebank v. Commissioner, 36 T.C.M. 200; Matter of Patricia W. Heath, State Tax Commission, June 24, 1985).

B. That petitioner's offer in compromise failed to meet the requirements of section 171(15) of the Tax Law which grants authority to the State Tax Commission to compromise any taxes and the penalties and interest in connection therewith only if the tax debtor has been discharged in bankruptcy or submitted proof of insolvency. Neither criteria apply to the petitioner. It is unfortunate that petitioner's check was erroneously negotiated; however, that act was not sufficient to effect a compromise of petitioner's tax liability.

C. That petitioners have failed to sustain their burden of proof, imposed by section 689(e) of the Tax Law, to show that they filed a New York State Personal Income Tax return for 1968.

D. That petitioners have failed to show that reasonable cause existed for their failure to timely file a return and timely pay New York State personal income taxes for 1968. Accordingly, the penalties asserted pursuant to section 685(a) of the Tax Law are sustained.

E. That a penalty is imposed by Tax Law section 685(c) for failure to pay an estimated tax or for underpayment of estimated tax. Section 685(d) of the Tax Law provides for certain exceptions to the imposition of this penalty; however, petitioners have failed to show that they qualified for any of the statutory exceptions. Accordingly, said penalty must be sustained.


F. That there is no provision in the Tax Law which permits interest to be waived.

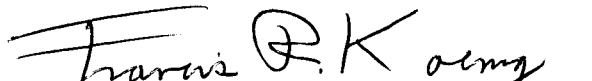
G. That the petition of Harry W. Bank (deceased) and Janet S. Bank is denied, and the Notice of Deficiency issued on January 5, 1984, reduced by \$15,573.63 (see Finding of Fact "2"), is sustained.

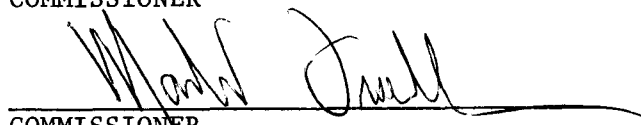
DATED: Albany, New York

STATE TAX COMMISSION

JAN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER