

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JANICE O’CONNOR	:	DECISION
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2016.	:	DTA NO. 829872

Petitioner, Janice O’Connor, filed an exception to the determination of the Administrative Law Judge issued on October 20, 2022. Petitioner appeared by Patrick Bryant, EA. The Division of Taxation appeared by Amanda Hiller, Esq. (Michael Trajbar, Esq., of counsel).

Petitioner did not file a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Oral argument was not requested. The six-month period for the issuance of this decision began on February 7, 2023, the due date for petitioner’s reply brief.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner has proven that the interest amount asserted in a notice of deficiency issued to her is erroneous.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except that we have modified findings of fact 2 and 3 to more fully reflect the record. The Administrative Law

Judge's findings of fact and the modified findings of fact appear below.

1. On April 13, 2017, petitioner, Janice O'Connor, filed an electronic request for an extension of time within which to file her New York State personal income tax return for the tax year 2016. Thereafter, she filed her New York State resident income tax return, form IT-201, for the year 2016 (return), on September 22, 2017.

2. Petitioner's return reports \$1,954.00 of New York State tax liability. The return also reports \$1,954.00 of nonrefundable credits, \$3,515.00 of tax withheld, \$800.00 of refundable college tuition credits, and \$152.00 of other refundable credits, resulting in a claimed overpayment and refund of \$4,467.00. On November 2, 2017, the Division of Taxation (Division) issued to petitioner the refund as requested on her return.

3. On October 9, 2019, the Division issued a statement of proposed audit change to petitioner that disallowed \$400.00 of the college tuition credit that she claimed on her 2016 return. The statement also asserted interest due on the proposed \$400.00 assessment. The statement explained the imposition of interest as follows: "Interest is due on the underpayment of tax from the due date of the return to the date the tax is paid in full."

4. The Division issued to petitioner a notice of deficiency, assessment number L-050697236, dated November 25, 2019, asserting a deficiency of tax in the amount of \$400.00 and interest in the amount of \$88.73.

5. Petitioner paid the tax asserted in the amount of \$400.00.

6. On February 20, 2020, petitioner filed a timely petition with the Division of Tax Appeals in protest of the notice. Petitioner did not contest the tax asserted due, but rather, disputed the interest calculation only.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that income tax must be paid as of the date the return is due, irrespective of any extension of time to file. The Administrative Law Judge also noted that the Division may assert interest on any underpayment of tax starting from the last due date for payment of tax to the date paid.

The Administrative Law Judge found petitioner's argument that the Division unfairly imposed interest from April 15, 2017 in the present matter to be a challenge to the facial constitutionality of the relevant statutes. The Administrative Law Judge determined that the Division of Tax Appeals lacks jurisdiction to consider such a challenge. She thus denied the petition and sustained the notice of deficiency.

ARGUMENTS ON EXCEPTION

Petitioner asserts that she overpaid her tax liability as of April 15, 2017 by the payment of withholding tax (*see* finding of fact 2) and that the \$400.00 she wrongly claimed as a refundable credit on her return was in the Division's possession until the Division issued the refund check on November 2, 2017. Petitioner notes that the Division's website provides that interest is "a charge for the use of money." Petitioner thus contends that the Division had no basis to impose interest on the \$400.00 tax deficiency from April 15, 2017 through November 2, 2017. Petitioner does not contest her liability for interest commencing November 2, 2017.

Petitioner also claims that the Division unconstitutionally applied the provisions of the Tax Law related to the imposition of interest in the present matter.

The Division contends that interest began to accrue on petitioner's assessment on April 15, 2017, the due date for filing 2016 returns. The Division thus contends that it correctly

calculated interest on the November 25, 2019 notice of deficiency.

The Division also asserts that the Tax Law provides no basis for this Tribunal to cancel interest that has been properly assessed.

OPINION

As the Administrative Law Judge correctly noted, a presumption of correctness attaches to a notice of deficiency and the burden of proof is on the taxpayer to show, by clear and convincing evidence, that the proposed deficiency is erroneous (Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]; *see Matter of Gilmartin v Tax Appeals Trib.*, 31 AD3d 1008 [3d Dept 2006]; *see also Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]).

Any tax due on a return must be paid by the due date for the filing of the return, without regard for any extension of time for filing (Tax Law § 652 [a]). Income tax withheld from a taxpayer during a calendar year is deemed to have been paid on April 15 of the following year, i.e., the due date for the filing of the return (Tax Law § 687 [i]). The Division is authorized to impose interest on any underpayment of tax (Tax Law § 684 [a]). Such interest “accrues on any balance of New York State personal income tax . . . due from the due date of the New York State personal income tax return (determined without regard to any extension of time to file), to the date of payment” (20 NYCRR 157.7 [a]). An underpayment of tax or deficiency is the amount of tax imposed by article 22 less the amount of tax reported on a return (Tax Law § 681 [g]).

As noted, petitioner claimed \$800.00 in college tuition credit on her return for the year at issue, \$400.00 of which was disallowed. College tuition credit is authorized under Tax Law §

606 (t). Such credit is refundable; that is, where the credit exceeds the tax imposed under article 22, such excess is treated as an overpayment of tax (Tax Law § 606 [t] [5]).

By her claim of \$400.00 of refundable credit to which she was not entitled, petitioner had a balance due of \$400.00 in New York State personal income tax for the 2016 tax year. This difference between her reported net liability and her actual net liability is a deficiency under Tax Law § 681 (g), and, pursuant to Tax Law § 652 (a) and 20 NYCRR 157.7 (a), interest imposed on such deficiency runs from April 15, 2017, even though the refund was not issued until November 2, 2017.

Petitioner has thus failed to show that the Division improperly asserted interest for the period April 15, 2017 through November 2, 2017, as claimed.

Petitioner's contention that the Division unconstitutionally applied the Tax Law provisions related to the imposition of interest lacks any rationale as to *why* the application of such provisions in the present matter is unconstitutional. We therefore reject this contention.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Janice O'Connor is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Janice O'Connor is denied; and
4. The notice of deficiency, dated November 25, 2019, is sustained.

DATED: Albany, New York
July 20, 2023

/s/ Anthony Giardina
Anthony Giardina
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner