

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>WALTER AND CHAYA GREENFELD</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 826733</b>
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal	:	
Income Taxes under Article 22 of the Tax Law and the	:	
New York City Administrative Code for the Years 2004	:	
through 2006.	:	

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Petitioners, Walter and Chaya Greenfeld, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the years 2004 through 2006.

A hearing was held before Herbert M. Friedman, Jr., Administrative Law Judge, in New York, New York, on May 19, 2016, at 10:30 A.M., with all briefs to be submitted by September 20, 2016. Petitioner Walter Greenfeld appeared at the hearing pro se and on behalf of his spouse, petitioner Chaya Greenfeld. Petitioners appeared by Saul Deutsch, CPA, post-hearing, and a revised (extended) schedule for filing briefs was established. Numerous extensions to that briefing schedule were requested and were granted, such that petitioners' brief was ultimately due for submission by March 20, 2017, which date began the six-month period for the issuance of this determination. Ultimately, since petitioners' brief was submitted beyond its final extended due date, the same was returned to petitioners' representative, and was not considered in rendering a determination herein. The Division of Taxation appeared by Amanda Hiller, Esq.

(Christopher O'Brien, Esq., of counsel). This matter was transferred to Dennis M. Galliher, Administrative Law Judge, pursuant to the authority of 3000.15(f) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. After review of the evidence and arguments, Judge Galliher renders the following determination.

### ***ISSUES***

I. Whether, upon audit, the Division of Taxation properly increased petitioners' reported income, and disallowed certain expense deductions claimed by petitioners, for tax years 2004 through 2006.

II. Whether petitioners have established grounds warranting abatement of the penalties asserted in this matter.

### ***FINDINGS OF FACT***

1. Petitioners, Walter and Chaya Greenfeld, filed a Form IT-201 (Resident Income Tax Return) for each of the years 2004, 2005 and 2006. More specifically, petitioners' Form IT-201 for the year 2004 was filed on November 25, 2005, while their forms IT-201 for the years 2005 and 2006 were filed on March 21, 2008. These latter forms were filed in response to written requests by the Division of Taxation (Division), commencing on or about September 21, 2007. These latter forms were filed directly with the auditor assigned by the Division to conduct an audit of petitioners returns for the years 2004 through 2006. This audit coincided with a then-ongoing audit of an entity known as B & H Healthcare Services, Inc., dba Nursing Personnel Homecare (B & H), of which petitioner Walter Greenfeld was president and in which he held a 2.5% ownership interest during B & H's fiscal year ended June 30, 2005, and a 3.75% ownership interest during B & H's fiscal year ended June 30, 2006.

2. The Division's auditor reviewed the items set forth on the foregoing income tax returns, in comparison to information received from the Internal Revenue Service (IRS) and information set forth on various documents and schedules issued by B & H. This review resulted in various adjustments increasing petitioners' income for the years at issue, as detailed hereafter.

\_\_\_\_ 3. For the year 2004, the Division increased petitioners' income to reflect unreported management fees shown on Form 1099-Misc (Miscellaneous Income) as paid by B & H to petitioner Walter Greenfeld in the amount of \$807,122.00. This increase resulted in additional New York State and New York City taxes in the respective amounts of \$68,805.00 and \$39,902.00.

4. For the year 2005, the Division increased petitioners' income by the amount of \$291,491.00, on the basis of the following adjustments:

- a) an increase representing unreported interest income shown on Form K-1 (Partner's Share of Income, Credits, Deductions, Etc.) as paid by B & H to petitioner Walter Greenfeld in the amount of \$691.00;
- b) an increase representing unreported gross receipts per Schedule C (Profit or Loss From Business) based on form 1099-Misc as paid by B & H to petitioner Walter Greenfeld in the amount of \$42,036.00;
- c) an increase representing unreported income shown on Form 1099-B (Proceeds From Broker and Barter Exchange Transactions) as paid by an entity known as First Clearing, LLC to petitioner Walter Greenfeld in the amount of \$109,696.00; and
- d) an increase to income representing the disallowance of a claimed deduction for payments to a SEP (Simplified Employee Pension) Qualified Plan reported as having been made by petitioner Walter Greenfeld in the amount of \$139,138.00.

These increases resulted in additional New York State and New York City taxes in the respective amounts of \$33,670.00 and \$19,459.00.

5. For the year 2006, the Division increased petitioners' income by the amount of \$291,491.00, on the basis of the following adjustments:

- a) an increase representing unreported interest income shown on Form K-1 as paid by B & H to petitioner Walter Greenfeld in the amount of \$6,026.00;
- b) an increase representing unreported gross receipts per Schedule C based on forms 1099 Misc as paid by B & H to petitioner Walter Greenfeld in the amount of \$312,128.00;
- c) an increase representing unreported income shown on Form 1099-B as paid by an entity known as First Clearing, LLC to petitioner Walter Greenfeld in the amount of \$211,581.00; and
- d) an increase to income representing the disallowance of a claimed deduction for payments to a SEP Qualified Plan reported as having been made by petitioner Walter Greenfeld in the amount of \$106,815.00.

These increases resulted in additional New York State and New York City taxes in the respective amounts of \$54,359.00 and \$28,949.00.

6. The Division made numerous written requests for documents concerning the foregoing items subjected to audit adjustment, including a "Final Request," dated May 8, 2013, seeking the following items to be submitted by June 10, 2013:

- a) a completed Schedule C Questionnaire;
- b) copies of Federal tax returns with all schedules and attachments for the years 2004, 2005 and 2006, as well as copies of all amended federal tax returns for such years;
- c) a federal audit history, including information concerning any ongoing or recently completed audits, together with copies of any resulting revenue agent reports as well as information concerning any changes reported to New York State together with copies of any documents filed in connection therewith and proof of payment;
- d) breakdowns of all Schedule C gross receipts and expenses reported for 2004, 2005 and 2006, including the names and identification numbers of all payors listed thereon;
- e) copies of all Form 1099-Misc and supporting third party documents supporting the total gross receipts for the years 2004, 2005 and 2006;
- f) schedules and a breakdown of all gifts to charity that were reported on Schedule A (Itemized Deductions) for the years 2004, 2005 and 2006;
- g) bank statements and cancelled checks to support the gifts to charity in the amount of \$339,789.00 claimed for the year 2006; and

h) third party documents to support the SEP, Simple IRA contributions that were claimed for the years 2005 and 2006.

7. By a letter dated July 31, 2013, the Division noted that petitioner had provided no documents pertaining to the audit for review, and advised petitioner that if the requested documents were not provided by August 30, 2013, the audit would be closed based upon the information available to the Division.

8. On December 13, 2013, the Division issued to petitioners, Walter and Chaya Greenfeld, a Notice of Deficiency (Assessment ID L-040530996-8), asserting additional New York State and New York City personal income taxes due for the years 2004, 2005 and 2006, as follows:

a) 2004: New York State and New York City taxes in the respective amounts of \$68,805.00 and \$39,902.00, plus penalties for negligence under Tax Law § 685(b)(1) and (2), plus interest.

b) 2005: New York State and New York City taxes in the respective amounts of \$33,670.00 and \$19,459.00, plus penalties for failure to timely file under Tax Law § 685(a)(1) and for negligence under Tax Law § 685(b)(1) and (2), plus interest.

c) 2006: New York State and New York City taxes in the respective amounts of \$54,359.00 and \$28,949.00, plus penalties for failure to timely file under Tax Law § 685(a)(1) and for negligence under Tax Law § 685(b)(1) and (2), plus interest.

9. None of the additional documents requested during the course of the audit were provided by petitioners. On November 10, 2014, the Division's auditor received from petitioner's then-representative an Amended Resident Income Tax Return (Form IT-201-X) for each of the years 2004, 2005 and 2006. Neither the listed preparer of the amended returns, nor either of the petitioners, signed the amended returns, and as a consequence, the auditor did not accept the same for filing or processing.

10. At hearing, petitioner submitted the following:

a) three identically formatted spreadsheet style schedules titled "Schedule of Management Fees Paid to Walter Greenfeld." These documents reflect, for each of the fiscal years

spanning July 1 through June 30, 2004, 2005 and 2006, columns listing dates, numbers (presumably check numbers), names (including Walter Greenfeld as well as several other names) and dollar amounts. Accompanying these three documents were unsigned copies of federal and New York State income tax returns (Form 1040 and Form IT-201, respectively), and unsigned copies of amended federal and New York State income tax returns (Form 1040X and Form IT-201-X) pertaining to petitioners for the years 2004, 2005 and 2006. These schedules and accompanying documents were not further explained on the record, including any means of distinguishing names thereon that would appear to be entities from those that would appear to be individuals;

b) a spreadsheet style schedule titled “List of Checks Found in Management Fees Payments in B & Healthcare’s Books.” This schedule reflects columns listing dates, numbers (presumably check numbers), payees, accounts (“NPH Chase” and “NFB Operating”), and amounts for each of the years 2004, 2005 and 2006. Included with this schedule were copies of checks in payment to the names listed on the schedule. There are no listed payments to Walter Greenfeld, but rather each of the listed payee names appear to be entities, including therein four payments listed as made to “Walter Greenfeld Charitable Foundation.” This schedule and its accompanying checks were not further explained on the record; and

c) an untitled spreadsheet style schedule reflecting columns listing “congregation name,” “check number,” “amount,” “date,” and “endorsed.” Included with this schedule were copies of checks in payment to the names listed on the schedule. The checks accompanying the schedule were drawn on three bank accounts, to wit, Chase Bank, in the name of “W. Greenfeld and C. Greenfeld,” Bank of America, in the name of “Walter Greenfeld,” and Fleet Bank, in the name of “Walter Greenfeld.” Each of the listed payee names appear to be entities, with the exception of a significant number of payments listing the “congregation name” as “cash.” This schedule and accompanying checks were not further explained on the record.

11. Finally, petitioners submitted a one-page document summarily disputing the Division’s audit adjustment amounts for each of the years in issue (*see* Findings of Fact 3, 4 and 5), upon the claim that the additional income attributed to petitioners was never received by petitioner Walter Greenfeld. Petitioners offered no argument or evidence with regard to the portion of the audit adjustments for 2005 and 2006 pertaining to disallowed claimed contributions to a pension plan.

**CONCLUSIONS OF LAW**

A. When the Division issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to the notice, and the burden of proof is on the taxpayer to demonstrate, by clear and convincing evidence, that the deficiency assessment is erroneous (*see Matter of O'Reilly*, Tax Appeals Tribunal, May 17, 2004; *see also Matter of Leogrande v. Tax Appeals Tribunal*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *Matter of Tavolacci v. State Tax Commn.*, 77 AD2d 759 [3d Dept 1980]; Tax Law § 689[e]). In short, petitioners carry the burden of proof to overcome the tax assessment in this proceeding (Tax Law § 689[e]). Accordingly, it is incumbent upon them to establish that petitioner Walter Greenfeld did not in fact receive income in the form of management fees or other fees from B & H and from the entity First Clearing LLC, and to establish that the claimed pension payments were made and properly allowable as reductions to petitioners' income.

B. It is abundantly clear from the record that during the course of its audit, the Division made numerous written requests to petitioners for records concerning their tax filings for the years in issue, including records in explanation of the discrepancies between federal and state filings, B & H filings and First Clearing LLC filings in relation to petitioner Walter Greenfeld, and pension fund contributions (*see* Finding of Fact 6). Petitioners, in turn, failed to respond in any meaningful manner to the Division's requests during the course of the audit (*see* Finding of Fact 9). In turn, and as born out by the evidence submitted in this case, that failure continued through the time of the hearing (*see* Findings of Fact 10 and 11). In addition, petitioner Walter Greenfeld gave very limited testimony at hearing. Essentially, petitioners have provided only unsubstantiated allegations and limited argument in response to the Division's bases for and assertion of additional tax due. Accordingly, petitioners have entirely failed to meet their burden

of proving any error in the Division's audit results or entitlement to any reduction to the amount of tax asserted as due by the Notice of Deficiency.

C. Penalties were imposed by the Division pursuant to Tax Law § 685(b)(1) and (2), for negligence or intentional disregard of Article 22 of the Tax Law, and pursuant to Tax Law § 685(a)(1), for failure to timely file their returns for the years 2005 and 2006. Petitioners did not allege the impropriety of such penalties, nor introduce any evidence to support their abatement. As detailed above, petitioners failed to provide any meaningfully responsive records to the Division, despite repeated requests sent by the Division to petitioners to do so, both during the audit and through the time of the hearing. Consequently, petitioner has failed to show reasonable cause for abatement of the foregoing, properly imposed, penalties and the same are, therefore, sustained.

D. The petition of Walter and Chaya Greenfeld is denied, and the Notice of Deficiency dated December 13, 2013, is sustained.

DATED: Albany, New York  
September 14, 2017

/s/ Dennis M. Galliher  
ADMINISTRATIVE LAW JUDGE