

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>MIKHAIL AND ELLA KOFMAN</b>	:	<b>DETERMINATION</b>
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 2013.	:	<b>DTA NO. 828847</b>

---

Petitioners, Mikhail and Ella Kofman, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2013.

A hearing was held before Kevin R. Law, Administrative Law Judge, in New York, New York, on June 9, 2022, with all briefs to be submitted by October 28, 2022, which date began the six-month period for the issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared d by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

***ISSUES***

- I. Whether petitioners realized gain on the sale of real property located in Southampton, New York.
- II. Whether petitioners had income from a discharge of indebtedness.
- III. Whether the Division of Taxation properly disallowed petitioners' claimed itemized deductions.
- IV. Whether penalties should be abated.

***FINDINGS OF FACT***

1. Petitioners, Mikhail and Ella Kofman, owned real property located at 500 Old Town Rd, Southampton, New York (the Southampton property).
2. On December 4, 2013, petitioners sold the Southampton property for \$6,750,000.00.
3. On January 31, 2015, the Division of Taxation (Division) commenced an audit of petitioners by sending a letter to them indicating that it did not have record of them filing a personal income tax return for the year 2013. The letter also stated that the Division was aware of petitioners' sale of the Southampton property. The letter requested a response by February 27, 2015.
4. On or about March 15, 2015, petitioners filed a 2013 New York State and New York City personal income tax return on which the sale of the Southampton property was reported (2013 return). Petitioners reported capital gain of \$195,776.00 from the sale of the Southampton property, \$241.00 of interest income, \$11,902.00 of taxable social security benefits, and claimed \$637,560.00 of itemized deductions, all of which represented home mortgage interest. The 2013 federal schedule D reported the \$6,750,000.00 sale proceeds and a cost or other basis of \$5,510,000.00, and claimed an adjustment of \$1,044,224.00 to the gain. The schedule D also reported that the Southampton property was acquired on June 15, 1995.
5. The 2013 return lists petitioners' home address of Central Park West, in Manhattan, New York, and indicates that petitioners were residents of New York City for the entire year.
6. On April 15, 2015, the auditor's contact log states that he spoke with Mr. Kofman concerning the scope of the audit.<sup>1</sup> Following this conversation, the Division issued an information document request (IDR) requesting the following records be produced: (i) a written

---

<sup>1</sup> At the hearing in this matter, the Division did not present the testimony of its auditor.

description of the business activities of the taxpayer both within and without New York State and a description of the places of business and activities performed at each location, the number of employees, and whether the location is owned or leased; (ii) federal audit history, including information about ongoing audits; (iii) copies of petitioners' federal and New York State personal income tax returns for the year 2013; (iv) a chronological history of petitioners' residence and employment; (v) copies of deeds and leases, home mortgage agreements, and loan agreements for all residences; (vi) copies of all insurance policies, voter registrations, drivers licenses, and auto registrations; (vii) copies of bank statements and cancelled checks; (viii) copies of gas and electricity bills for all residences; (ix) copies of telephone bills including long distance calls of all residences; (x) copies of all credit cards statements, including charge slips; (xi) copies of diaries, calendars, and appointment records, in written and electronic form, number of days claimed to be spent outside New York City and State during 2013, with supporting documents; (xii) an explanation of petitioners' relationship with 275 Central Park West, Apt 9f, New York, New York; (xiii) documentation supporting the interest expense deduction of \$637,560.00; (xiv) an explanation of how the gain was calculated on the Southampton property; (xv) copies of permits, (certificate of occupancy) building contracts, invoices; proof of cancelled checks, wire transfers, credit card payments etc.; and copies of closing statements.

7. On June 23, 2015, petitioner, Mikhail Kofman, met with the Division's auditor. At this meeting, petitioners provided a closing statement from the sale of the Southampton property. The auditor's contact log indicates that he saw a letter referencing a possible foreclosure of the Southampton property prior to its sale. Mr. Kofman explained to the auditor that because petitioners could no longer pay the mortgage on the Southampton property, it was sold. Mr. Kofman stated that when the Southampton property was sold, they were residing at 275 Central

Park West, Apt 9f, New York, New York, and prior to that, petitioners also rented an apartment on Park Avenue in Manhattan that was also used as an office. A lease provided for the Central Park West apartment indicates a \$6,500.00 monthly lease payment.

8. Mr. Kofman further explained that the gain on the sale of the Southampton property was computed based upon his estimate of the costs of improvements made throughout the years he and his wife owned it. Mr. Kofman told the auditor that the Southampton property was bought for \$963,000.00 and that he and his wife made extensive improvements to the property during the years they owned it. He stated that he did not have any records substantiating the cost, but would check with the builder and the Town of Southampton. The auditor's contact log indicates that one certificate of occupancy issued by the Town of Southampton was submitted to the auditor.<sup>2</sup>

9. At the June 23, 2015 meeting with the auditor, Mr. Kofman also provided a transcript from the Internal Revenue Service. This transcript indicated that in addition to the form 1099s issued for the sale of the Southampton property, three form 1099-Cs (cancellation of indebtedness) totaling \$65,739.00 were issued to petitioners from Chase Bank.

10. During the course of the audit, petitioners provided an unsworn letter from the alleged contractor who was involved with the alleged renovations to the Southampton property, Robert P. Cox. Mr. Cox states in his letters that he no longer had any records to document the cost of the renovations and improvements to the Southampton property, but estimated that petitioners spent between \$6,500,000.00 to \$6,800,000.00 on improvements and renovations.

---

<sup>2</sup> Copies of many of the documents presented to the auditor were not included in the audit file. The audit file indicates that such documents were sent back to petitioners via United Parcel Service after the auditor had an opportunity to examine them.

Petitioners did not submit any other type of documentations to substantiate the cost of the alleged renovations.

11. On June 23, 2016, the Division issued a consent to field audit adjustment to petitioners proposing New York State and City tax of \$426,884.00 and \$186,227.00 respectively, plus penalties for late filing/failure to file and negligence, as well as interest. The tax was computed based upon the disallowance of the amount petitioners claimed they expended as capital improvements to the Southampton property. The Division also asserted \$65,739.00 as income from discharge of indebtedness based upon the form 1099-Cs issued to them by Chase Bank.

12. On April 11, 2017, the Division issued notice of deficiency, notice number L-046231110, to petitioners, that asserted New York State and New York City personal income tax in the amount of \$613,071.00, plus penalties, pursuant to Tax Law § 685 (a) (1) and (b) (1) and (2), as well as interest.

13. At the hearing in this matter, both petitioners testified that they had made extensive renovations to the Southampton property during the time they owned it. Petitioners asserted that sometime in the early 1990's, Mr. Kofman declared chapter 7 bankruptcy, and during the bankruptcy proceedings, the trustee took all their financial records, including their records involving the improvements to their Southampton property.

14. Petitioners also presented an unsworn letter from a Robert Cox that is consistent with the other letter presented to the auditor, allegedly written by Mr. Cox during the audit. Mr. Cox states in the letter that it is his estimate that petitioners spent over \$6,500,000.00 in renovations, additions, and improvements to the Southampton property between 1986 and 2008. No other

documentation, such as pictures, contracts, proof of payment, etc., was submitted by petitioners to establish the cost of the alleged improvements and renovations to the project.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 612 (a) provides that the New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with modifications not relevant here. Internal Revenue Code (IRC) (26 USCA) § 61 (a) (3) provides that gross income includes “gains derived from dealings in property.” Pursuant to IRC (26 USCA) § 1001 (a), taxpayers must recognize gain when they sell property for more than its adjusted basis (*see also* Treas Reg. (26 CFR) § 1.61–6 [a]). Taxpayers may increase their adjusted basis in property for costs they incur to improve the property, but they are required to prove the basis increases they claim (*see* IRC (26 USCA) § 1016 [a]; Treas Reg. (26 CFR) § 1.1016–2 [a]). If taxpayers cannot produce records of actual expenditures, it is permissible to estimate the amounts of expenses if they submit credible evidence that provides a factual basis for the estimate (*see Cohan v Commissioner*, 39 F2d 540 [2d Cir.1930]). In this case, petitioners submitted no such credible evidence. Petitioners’ sole submission was an unsworn letter from their alleged contractor who, like petitioners, claimed to have no records of the improvements made, but “estimated” that petitioners spent in excess of \$6.5 million to renovate the Southampton property. This letter has been accorded no evidentiary value as it is unsworn and could have been written by anyone, including either of the petitioners. In addition, petitioners’ claim, that the Division could have used property tax bills to estimate the cost of improvements, impermissibly shifts the burden of proof in this matter. If petitioners believe that, property tax bills for the Southampton property have some bearing on the value of the alleged

improvements made, it was incumbent upon them to submit same. Petitioners did nothing, other than assert they did not owe tax.

B. Petitioners also claim that the tax asserted in the notice of deficiency is overstated by the amount reported on the 1099-Cs issued by Chase Bank as discharge of indebtedness because they were insolvent in 2013. Taxpayers generally realize income upon the discharge of indebtedness (*see* IRC [26 USCA] § 61 [a] [12]); however gross income does not include a discharge of indebtedness that occurs when the taxpayers are insolvent (*see* IRC [26 USCA] § 108 [a] [1] [B]). Petitioners provide no evidence to support their claim they were insolvent at the time the discharge occurred. Therefore, this claim is rejected.

C. Petitioners also dispute the disallowance of their claimed itemized deduction for home mortgage interest. Pursuant to IRC (26 USCA) § 163 (h), taxpayers can claim an itemized deduction for qualified residence interest or home mortgage interest. However, Tax Law § 615 (f) (3) limits the New York itemized deduction allowed for an individual whose New York adjusted gross income exceeds one million dollars to 50% of the individual's federal itemized deduction for charitable contributions. Because petitioners have not proven that their adjusted gross income was less than \$1,000,000.00, this argument is rejected as a matter of law.

D. Finally, penalties for failing to file/late filing a return pursuant to Tax Law § 685 (a) (1) and for negligence pursuant to Tax Law § 685 (b) (1) and (2), were asserted in the notice of deficiency. Penalties imposed pursuant to Tax Law § 685 (a) (1) may be abated upon a showing of reasonable cause while the penalties imposed under Tax Law § 685 (b) (1) and (2) will be canceled if petitioners establish that the tax deficiency was not due to negligence or intentional disregard of the Tax Law. Petitioners have provided no basis to support abatement of the penalty imposed. They failed to timely file an income tax return reporting the gain from the sale of the

Southampton property and the income from discharge of indebtedness. While it is not inconceivable that the gain asserted in the notice of deficiency is overstated, petitioners failed to produce any admissible evidence to support their claims that the tax asserted is overstated. The tax and resulting penalties are a result of their failure to produce any records as is required under the law.

E. The petition of Mikhail and Ella Kofman is denied and the notice of deficiency, dated April 11, 2017, is sustained.

DATED: Albany, New York  
April 20, 2023

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE