

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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

Petitioner, Janice O’Connor, 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 2016.

A videoconferencing hearing via CISCO Webex was held before Donna M. Gardiner, Administrative Law Judge, on February 1, 2022, at 10:00 a.m., with the final brief to be submitted by April 20, 2022, which date commenced the six-month period for issuance of this determination. Petitioner appeared by Patrick Bryant, EA. The Division of Taxation appeared by Amanda Hiller, Esq. (Michael Trajbar, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

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. On her return, petitioner requested a total refund of \$4,467.00. Included within the refund request was a college tuition credit of \$800.00. On November 2, 2017, the Division of Taxation (Division) issued petitioner the total refund 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.

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.¹ Petitioner does not contest the tax asserted due, but rather, disputes the interest calculation only.

CONCLUSIONS OF LAW

A. As stated above, petitioner only disputes how the interest was calculated on the notice issued to her. It is initially noted that, 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 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]).

¹It is noted that attached to the petition is form POA-1 that was filed with the Division prior to the filing of the petition with the Division of Tax Appeals and has been accepted as valid pursuant to 20 NYCRR 3000.2 (b) (2).

B. Tax Law § 652 (a) states, in pertinent part, as follows:

“a person required to make and file a return under this article shall, without assessment, notice or demand, pay any tax due thereon to the commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return).”

C. Tax Law § 684 addresses the interest due on any underpayment of tax, in pertinent part, as follows:

“(a) General.—If any amount of income tax is not paid on or before the last date prescribed in this article for a payment, interest on such amount at the underpayment rate set by the commission pursuant to section six hundred ninety-seven of this part, or if no rate is set, at the rate of seven and one-half percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted.”

Pursuant to Tax Law § 697 (j) (5), interest on underpayments is compounded daily. The Division has the authority to set the underpayment rate on a quarterly basis and is required to make the applicable underpayment rate public (*see* Tax Law § 697 [j] [1]; [6]).

D. Petitioner argues that the Division’s statutory method for the calculation of interest is unfair. Specifically, petitioner states that she was not issued her claimed refund until November of 2017. Therefore, the interest calculation on the subsequent tax liability of \$400.00 should not be calculated beginning April 15, 2017, but rather, from November 2, 2017, the issuance date of the refund check to petitioner. Petitioner states that it is inherently unfair to assess interest beginning roughly six months prior to her receiving the erroneous \$400.00 refund in issue.

It is petitioner’s burden to establish that the calculations in a deficiency notice are invalid (*Matter of Gilmartin v Tax Appeals Trib.*, 31 AD3d at 1010). Petitioner’s argument that the interest calculation is unfair is a challenge to the facial constitutionality of the relevant statutes. However, the jurisdiction of the Division of Tax Appeals, as prescribed in its enabling

legislation, does not encompass facial constitutional challenges (*see Matter of Eisenstein*, Tax Appeals Tribunal, March 27, 2003), as such statutes are presumed valid.

E. The petition of Janice O'Connor is denied and the notice of deficiency, dated November 25, 2019, is sustained.

DATED: Albany, New York
October 20, 2022

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE