

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>BORIS DUDARENKO AND ANA DUDARENKO</b>	:	<b>DETERMINATION</b>
for Redetermination of a Deficiency or for Refund of	:	<b>DTA NO. 850507</b>
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Year 2018.	:	

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Petitioners, Boris Dudarenko and Ana Dudarenko, 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 Administrative Code of the City of New York for the year 2018.

A formal hearing by videoconference was held before Anita K. Luckina, Administrative Law Judge, on August 12, 2025, with all briefs to be submitted by November 21, 2025, which date commenced the six-month period for the issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Amy Seidenstock, Esq., of counsel).

***ISSUE***

Whether petitioners are liable for the payment of interest for tax year 2018.

***FINDINGS OF FACT***

1. On March 2, 2019, petitioners, Boris Dudarenko and Ana Dudarenko, filed with the Division of Taxation (Division) form IT-203, nonresident and part-year resident income tax

return, for tax year 2018 (2018 return). On the 2018 return, petitioners reported, on line 7, a capital gain or loss federal amount of \$396,674.00 and New York State amount of \$0.00; total New York State and New York City tax withholdings of \$12,983.00; and total New York State tax due of \$9,419.00. Petitioners claimed a refund of \$3,564.00.

2. On October 16, 2020, the Division initiated a desk audit review of petitioners' 2018 return and issued to petitioners an inquiry notice requesting more information regarding the capital gains reported on their 2018 return, including: the date that petitioners moved out of New York State; the date of sale for each capital gain or loss; the address of any property sold and the sale date; and a copy of petitioners' 2018 federal schedule D, capital gains and losses, and 2018 form(s) 8949, sales and other dispositions of capital assets.

3. On October 29, 2020, petitioners submitted documentation for review, including federal schedule D and form 8949, for tax year 2018.

4. On June 22, 2021, the Division issued to petitioners a statement of proposed audit changes, assessment number L-053644814, asserting total New York State and New York City taxes due of \$46,391.00, plus interest of \$8,379.02, for tax year 2018 (statement). The statement explained that, based on the information petitioners provided indicating that they moved out of New York State and New York City in December 2018, the Division determined that petitioners received taxable capital gains prior to that move-out date and adjusted their 2018 return to reflect those taxable gains. Specifically, the Division prorated petitioners' interest income based on their period of New York residency and adjusted the capital gain amount on line 7 (New York State amount) of petitioners' 2018 return from \$0 to \$396,674.00. The statement indicates that the filing due date for tax year 2018 was April 15, 2019. The statement also advised petitioners

that “[i]nterest is required under the New York State Tax Law for late payment or underpayment of any tax due, at the applicable rate.”

5. On July 13, 2021, petitioners filed form IT-203-X, amended nonresident and part-year resident income tax return, for tax year 2018, reporting, on line 7, a capital gain New York State amount of \$396,674.00, and total New York State and New York City taxes due of \$55,810.00 (2018 amended return). Petitioners reported an amount of tax owed of \$46,391.00 on the 2018 amended return.

6. Petitioners remitted to the Division a check, dated July 12, 2021, in the amount of \$46,391.00, as payment of the additional tax due for tax year 2018.

7. On August 9, 2021, the Division issued to petitioners a notice of deficiency, assessment number L-053644814, asserting interest due of \$8,644.60, for tax year 2018 (notice).

8. Petitioners requested a conciliation conference with the Division’s Bureau of Conciliation and Mediation Services (BCMS). By conciliation order, CMS number 000331595, dated March 24, 2023, BCMS sustained the notice (conciliation order).

9. On April 15, 2023, petitioners timely filed a petition with the Division of Tax Appeals protesting the conciliation order.

10. At the hearing, Boris Dudarenko testified on behalf of petitioners. Mr. Dudarenko maintains that petitioners prepared and filed their 2018 return in good faith, relying on TurboTax software to properly allocate tax between New York and New Jersey, petitioners’ state of residence as of December 17, 2018, and the state of residence petitioners selected when preparing their 2018 return. Mr. Dudarenko testified that after receiving the notice in 2021, petitioners “immediately hired [a] certified public accountant, filed an amended return, and paid the full tax liability of \$46,931 [sic] on July 15th, 2021” and “also amended [their] New Jersey

tax returns.” Mr. Dudarenko further testified that petitioners do not dispute the amount of tax asserted due by the Division, only the interest. Petitioners maintain that they made a good faith effort to comply with their tax obligations and that they have had no prior tax issues preparing their tax returns using TurboTax software. Mr. Dudarenko also testified that “[t]he department’s delay was a significant contributing factor” because petitioners “filed [their] 2018 return on time on April 15<sup>th</sup>, 2018 [sic], yet the department did not issue a notice regarding [their] tax residency or liability until 2021, more than two years later.” Petitioners also assert that the interest presents a substantial financial hardship. Mr. Dudarenko submitted in evidence a copy of his New Jersey State driver license issued on December 18, 2018, and an affidavit of title indicating ownership by petitioners of real property in New Jersey since December 14, 2018.

11. In support of its position, the Division submitted the affidavit of Sabrina Furman, a Tax Technician III in the Division’s Income Franchise Desk Audit Bureau, sworn to on July 22, 2025, and attachments, including: petitioners’ 2018 return; the Division’s inquiry notice and petitioners’ responding documentation; petitioners’ 2018 amended return; and petitioners’ check, dated July 12, 2021, in the amount of \$46,391.00. Ms. Furman’s duties include reviewing and supervising the review of New York State personal income tax returns, including files and documents received during personal income tax return audits, and advocating before the Division of Tax Appeals on behalf of the Division. Ms. Furman avers that she reviewed the Division’s systems, including filing history, case contacts, correspondence and other documents for petitioners for tax year 2018 and that “[b]ased upon my review of the Division’s records and my personal knowledge of Departmental policies and procedures, I have concluded that the interest due on the underpayment of tax asserted on the Notice of Deficiency dated August 9, 2021, was

correctly computed at the applicable rate from the due date of the return, pursuant to Tax Law §§ 652 and 684(a).”

### **CONCLUSIONS OF LAW**

A. A presumption of correctness attaches to a notice of deficiency issued by the Division (*see Matter of Greenfeld*, Tax Appeals Tribunal, March 7, 2019, citing *Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *Matter of Tavolacci v State Tax Commn.*, 77 AD2d 759, 760 [3d Dept 1980]) and the burden rests on the taxpayer to demonstrate by clear and convincing evidence that the Division’s determinations are erroneous (*see id.*, citing *Matter of O’Reilly*, Tax Appeals Tribunal, May 17, 2004; *Matter of Tavolacci v State Tax Commn.*, 77 AD2d at 760; Tax Law § 689 [e]).

B. Any tax due on a return must be paid by the due date for filing the return (*see* Tax Law § 652 [a]). Tax Law § 684 (a) states, in relevant part, that:

“If any amount of income tax is not paid on or before the last date prescribed in this article for payment, interest on such amount . . . *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” (emphasis added).

As relevant here, Tax Law § 3008 (a) provides for the abatement of interest attributable to unreasonable error or delay by Division employees in performing “ministerial or managerial” acts, but only if no significant aspect of the unreasonable error or delay can be attributed to the taxpayer (*see* Tax Law § 3008 [a] [1] [A] and [2]). Thus, interest on petitioners’ underpayment of income tax is mandatory except to the extent that it may be abated under Tax Law § 3008 (a).

C. Petitioners do not dispute that the delay in determining the correct amount of tax due for tax year 2018 was the result of petitioners’ reporting error on their 2018 return. Rather, petitioners object to the interest amount due, arguing that the Division’s delay in discovering their reporting error resulted in the accumulation of interest. However, the Division had up to

three years after petitioners filed their 2018 return to assess tax (*see* Tax Law § 683 [a]). The Division issued the notice to petitioners on August 9, 2021, well within the time to issue an assessment, thus, there was no per se unreasonable error or delay by the Division.<sup>1</sup>

By requesting that interest be abated, petitioners, in essence, seek an interest-free loan from New York State. As noted by the Tribunal in *Matter of Rizzo* (Tax Appeals Tribunal, May 13, 1993):

“Failure to remit tax gives the taxpayer the use of funds which do not belong to him or her, and deprives the State of funds which belong to it. Interest is imposed on outstanding amounts of tax due to compensate the State for its inability to use the funds and to encourage the timely remittance of tax due . . . It is not proper to describe interest as substantial prejudice, as it is applied to all taxpayers who fail to remit . . . tax due in a timely manner. Rather, a more accurate interpretation would be to say that interest represents the cost to the taxpayer for the use of the funds.”

Petitioners have acknowledged that their reporting error on the 2018 return, even if unintentional, resulted in the additional tax due, and have neither alleged nor adduced any unreasonable error or delay by the Division. As such, petitioners have not met their burden of proving that interest should be abated (*see Matter of Dunn*, Tax Appeals Tribunal, February 24, 2011).

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<sup>1</sup> Petitioners also argued that their good faith reliance on TurboTax software to accurately prepare their 2018 return is reasonable cause to abate interest under 20 NYCRR 2392.1. Pursuant to 20 NYCRR 2392.1, specified additions to tax, penalties and interest may be cancelled if the tax law failure upon which they are based was due to reasonable cause and not due to willful neglect. However, 20 NYCRR 2392.1 does not include mandatory interest imposed pursuant to Tax Law § 684 (a). Thus, it is improper to consider here whether petitioners' reliance on TurboTax software constitutes reasonable cause for purposes of 20 NYCRR 2392.1.

D. The petition of Boris Dudarenko and Ana Dudarenko is denied, and the notice of deficiency, dated August 9, 2021, is sustained.

DATED: Albany, New York  
May 14, 2026

/s/ Anita K. Lukina  
ADMINISTRATIVE LAW JUDGE