

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81 (1) I
Income Tax
June 17, 1981

This Advisory Opinion supersedes Advisory Opinion numbered TSB-A-81(1)-I, dated May 26, 1981; which should be destroyed.

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I810217B

On February 17, 1981, a Petition for Advisory Opinion was received from Jose D. Alfaro, 41-27 169 Street, Flushing, New York 11358.

Petitioner inquires as to:

- (1) the liability of his former spouse for a portion of a joint tax liability incurred as a result of the filing of a joint personal income tax return in a prior year, and
- (2) whether interest and additions to tax imposed under Article 22 of the Tax Law may be waived under the circumstances described below.

Petitioner avers the following facts. Petitioner and his wife filed a joint New York State Personal Income Tax return for the 1978 taxable year. To date, the full amount of tax due for such taxable year has not been paid. At no time has Petitioner denied liability for the amount of tax due but he has stated that he was ". . .not in a position to pay the amount demanded now. . . ."

Petitioner wrote to the New York State Department of Taxation and Finance (hereinafter "the Department") on several occasions during 1979 and 1980 and personally visited two different offices of the Department. The purpose of the correspondence and visits was to explain Petitioner's inability to pay the amount of tax due because of recent financial losses and to encourage the Department to attempt to collect the amount of tax due from his ex-wife. Petitioner and his wife had been divorced in April 1980. Petitioner received no response to his inquiries from the Department other than a demand for payment of the tax due.

Section 651(b)(2)(A) of the Tax Law provides that, with certain exceptions unrelated to the present case, if a husband and wife file a joint New York State Personal income Tax return ". . . their tax liabilities shall be joint and several . . ."

Section 651(h) of the Tax Law provides:

"Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to th^e state of New York."

Section 684(a) of the Tax Law provides 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 "No provision is made in the Tax Law for waiver

or modification of interest imposed under section 684(a) of the Tax Law, except for the very limited authority granted to the Tax Commission (in section 697(c) of the Tax Law), to abate interest in specified circumstances not present here.

Section 685(a) of the Tax Law provides for additions to tax for failure to file a tax return, failure to pay tax shown on a return or failure to pay tax required to be shown on a return, ". . . unless it is shown that such failure is due to reasonable cause and not due to willful neglect. . . ."

Accordingly, pursuant to section 651(b)(2)(A) of the Tax Law, Petitioner and his wife are jointly and severally liable for the tax in question. Since they are jointly and severally liable, the amount of tax due may properly be collected entirely from Petitioner, entirely from Petitioner's wife or partially from each. Of course, in no event may more than the full amount of tax, interest, additions and penalties due be collected from either spouse or both. However, since, pursuant to section 651(h) of the Tax Law, the tax is a debt owed to the State of New York, it is solely within the discretion of the State of New York to decide from whom the tax will be collected.

Furthermore, since no applicable provision is made in the Tax Law for waiver or modification of interest imposed under section 684(a) of the Tax Law, the amount of interest imposed upon Petitioner pursuant to that provision may not be waived or modified.

A request for an abatement of penalty is not the proper subject for an Advisory Opinion. The present Petition must therefore be denied with respect to such request. However, such request will be forwarded to the appropriate authority within the Department of Taxation and Finance for processing. Petitioner will be advised by letter of the details of such transmittal.

DATED: May 29, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau