

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition

of

CHARLOTTE SABATINE

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Years 1966 through
1972.

:
:
:
: DECISION
: DTA NO.
800025

Petitioner, Charlotte Sabatine, 8085 East Phillips Circle, Englewood, Colorado 80112, filed an exception to the determination of the Administrative Law Judge issued on December 17, 1987 with respect to her petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1966 through 1972 (File No. 800025). Petitioner appeared by Robert A. Bloom, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Ann W. Murphy, Esq., of counsel).

Petitioner and the Division filed letter briefs on the exception. Oral argument at the request of the petitioner was heard on April 14, 1988.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner, Charlotte Sabatine, is properly entitled to a refund, under the innocent spouse provisions of the Tax Law, of the personal income taxes she paid for the years at issue.

FINDINGS OF FACT

We find the facts in this matter as stated in the determination of the Administrative Law Judge and such facts are incorporated herein by this reference except that findings of fact "5", "6" and "13" of such determination are modified as set forth below.

To summarize, petitioner and her then husband, John Sabatine, filed joint Federal and New York State income tax returns for the years 1966 through 1972, inclusive. On August 24, 1976, the Division of Taxation issued a Notice of Additional Tax Due/Notice and Demand to petitioner and John Sabatine for these years. The adjustments made on said statement were the same as adjustments made for Federal purposes by the Internal Revenue Service, which were agreed to by John Sabatine in 1974. These adjustments were in excess of 25% of the amount of New York adjusted gross income stated on the return and were for additional income which was determined to be attributable solely to John Sabatine's medical practice.

On May 18, 1977, the Division issued a Notice and Demand pursuant to Tax Law section 694 for payment of tax due under a jeopardy assessment for the audit period.

Petitioner and John Sabatine were married from 1965 to 1975. For the years at issue, petitioner signed all tax returns but was not aware of any omission of income.

During the nine years petitioner and John Sabatine were married, petitioner worked approximately 10 days. Such work was performed in her occupation as a registered nurse. Petitioner never worked in John Sabatine's office, reviewed his business records or was informed of the amount of his income.

Finding of fact "6" of the Administrative Law Judge's determination is modified to read as follows:

After their marriage in May of 1965, petitioner and her husband rented an apartment for one and a half years. Subsequently, they purchased a home in Port Washington for \$30,000.00. After three years, petitioner and her husband moved to another home, their last marital residence, which they had built at a cost of \$115,000, financed in part by a \$50,000 mortgage loan, a \$30,000 loan from petitioner's mother-in-law and a short term loan of undisclosed amount from the builder.

Finding of fact "13" of the Administrative Law Judge's determination is modified to read as follows:

Petitioner described the last marital residence as "lavish" but similar to houses owned by doctors who had been in practice for the length of time her husband had practiced. Petitioner described certain aspects of their life style as "cheap", indicating for example, that she and her former husband did all of the plantings around the house themselves and bought the plants from an establishment called "Cheap Sams" and that she and her husband always

bargained to get everything as cheaply as they could. Petitioner indicated that she and John Sabatine owned up to four automobiles at any given time during their marriage, two of the cars were owned by her husband prior to their marriage. One was an old car purchased by her husband for petitioner's sister who lived with her and her husband for a while during their marriage. Although they did entertain frequently, petitioner "did the cooking and that kind of thing." Petitioner had credit cards in her name and access to other credit cards in her husband's name but petitioner had to check on all purchases in excess of \$100 with her husband. Petitioner's sister, who lived with her and Dr. Sabatine during the late 1960's characterized their lifestyle at that time as "a good lifestyle like you would expect a doctor to live. They had a nice home, they went out to nice places to eat and that kind of thing weekly."

Finding of fact "5" of the Administrative Law Judge's determination is modified to read as follows:

In 1975, the petitioner moved out of her marital residence with her two daughters. In 1976, after John Sabatine defaulted on the mortgage, the house was foreclosed upon and sold at public auction. The proceeds were used to satisfy liens including Federal taxes. The remaining monies were paid to the Nassau County Treasurer. Petitioner paid one-half of the Federal liability and then filed claims for refund, seeking relief under the innocent spouse rule. Other than her joint interest in the marital residence, petitioner left the marriage with no significant assets. After she left the marital residence, petitioner supported herself by working as a private nurse, received public assistance for a period of time and did not receive child support payments from her husband.

On October 11, 1984 following litigation in the District Court for the Eastern District of New York, petitioner was awarded judgment for her portion of the Federal tax liability for the years 1966, 1967 and 1968. The reasons for said award were not disclosed.

On September 1, 1982, the Nassau County Treasurer paid \$38,914.53 from the surplus foreclosure monies to the State Tax Commission for taxes, penalty and interest due for the audit period. On August 20, 1984, petitioner filed a New York State claim for refund under the innocent spouse rule for each of the years at issue.

OPINION

For the period in issue, Tax Law section 651(b)(5)(i) provided that:

"Under regulations prescribed by the tax commission, if

(A) a joint return has been made...for a taxable year and on such return there was omitted from New York adjusted gross income an amount properly included therein which is attributable to one spouse and which is in excess of twenty-five percent of the amount of New York adjusted gross income stated in the return,

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission and

(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from New York adjusted gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission, then the other spouse shall be relieved of liability for tax (including interest, penalties and other amounts) for such taxable year to the extent that such liability is attributable to such omission from New York adjusted gross income." (Emphasis added.)

The regulations adopted by the Tax Commission pursuant to this section mirror the statutory language (20 NYCRR 145.10[e]).

Petitioner contends that her application for refund should be granted because she is relieved of liability by virtue of the so-called innocent spouse provisions of the Tax Law, cited above. In the alternative, she contends that her refund for the years 1966, 1967 and 1968 should be granted to be consistent with the Federal jury award.

The Division contends that petitioner benefited significantly from the additional income gained from the items omitted from the State tax returns and thus should bear her part of the responsibility for tax due on the omitted income.

The Administrative Law Judge determined that petitioner proved that the omitted income was attributable to her husband and that she had no knowledge of the omission, thus satisfying the first two conditions of the innocent spouse provisions. However, the Administrative Law Judge found that petitioner benefitted significantly, directly or indirectly, from the omitted income and therefore was not entitled to refund for any of the years in issue.

We disagree with this latter determination of the Administrative Law Judge.

Tax Law section 651(b)(5)(i)(C) did not automatically deny innocent spouse status based on a finding that the non-offending spouse benefited significantly from the income not included on the State tax return.¹ Instead, this was only a factor to be taken into account along with all the other

¹The Federal innocent spouse rule applicable for the years at issue differed from the New York rule in that it did not include the New York requirement that the non-offending spouse significantly benefit from the items omitted from gross income. The requirement was eliminated retroactively from the Federal law by Public Law 98-369 section 424(a), effective July 18, 1984. The "significant benefit" language was eliminated from Tax Law §651(b) by L 1985, ch 65, §113.

facts and circumstances. The question is one of equity and is one which is answered based upon all of the facts and circumstances of the case.

We find that the petitioner proved that she did not significantly benefit from the omitted income. There was no sudden rise in her standard of living. During the marriage, she did not receive lavish gifts, additional money or other material objects. Petitioner left the marriage without any significant assets, except her encumbered joint interest in the marital residence.

Under all the facts and circumstances present in this case, it would be inequitable to hold Mrs. Sabatine liable for the deficiency in tax. Therefore, she is entitled to the benefit that was provided for an innocent spouse by Tax Law section 651(b)(5)(i). (See, Matter of Richard Cocilova and Joan Cocilova, State Tax Commn., February 24, 1987.)

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the petitioner, Charlotte Sabatine, is in all respects granted;
2. The determination of the Administrative Law Judge is reversed; and
3. The petition of Charlotte Sabatine is granted and the claims for credit for refund of personal income tax filed by petitioner on August 20, 1984 for the tax years 1966 through 1972 are granted.

Dated: Albany, New York
August 25, 1988

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner