



Daily Tax Report: State
March 2, 2023, 3:21 PM

N.Y. Judge Cancels Man's \$3 Million Tax Bill Tied to Bank Fraud

By Perry Cooper

A New York man is off the hook for a \$3 million tax bill after an administrative law judge found the state didn't prove the amount of income he failed to report as a result of his criminal activities.

Carlos Deleon pleaded guilty to conspiracy to defraud the US for cashing over \$1.5 million in fraudulently obtained tax refund checks. In 2013, the judge in the criminal case found \$300,000 of the total was attributable to Deleon and found him jointly and severally liable for the full amount with his convicted co-conspirators.

After Deleon served his six-month sentence, he began making monthly installments of 20% of his income to the Justice Department, which sent a share to the New York Division of Taxation. Deleon had been making payments, but after a subsequent audit the state sent him a tax bill in 2019 seeking more than \$1 million, penalties of more than \$500,000, and interest of more than \$1.4 million for tax year 2007, when he didn't report the illegal income.

Administrative Law Judge Jessica DiFiore of the Division of Tax Appeals canceled that bill in an opinion posted Thursday, finding that the state didn't establish how it determined Deleon's gross income for 2007. "The record is devoid of any evidence as to the amount of income petitioner failed to report as a result of his criminal activities or of any rational method the Division used to determine petitioner's income tax liability," she wrote.

DiFiore rejected Deleon's argument that the tax department was improperly seeking to collect the restitution amount twice since he and his co-conspirators were already making payments.

"There is no evidence that the Assistant United States Attorney agreed that in exchange for the guilty plea, the restitution ordered by the Court would satisfy any tax deficiency, interest, or penalty imposed under the Tax Law," she said. "Accordingly, assuming the Division had a rational basis to issue to notice of deficiency, the imposition of tax, fraud penalty (if also properly pled and proven), and interest would have been proper."

Deleon's attorneys Mark I. Cohen and Gillian Feehan of Cohen, Frankel & Ruggiero LLP admitted they were "flabbergasted" by the ruling in favor of their client.

The tax department told them that because their initial request to settle was late, all of their arguments were foreclosed, Feehan said. But the judge agreed that the examiner didn't respond to their inquiries and didn't back up his calculations, Cohen said.

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