

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RAYMOND RHODES	:	DECISION
	:	DTA No. 808584
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law for	:	
the Year 1985.	:	

Petitioner Raymond Rhodes, 3 Alder Street, Red Hook, New York 12571, filed an exception to the determination of the Administrative Law Judge issued on September 9, 1993. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Arnold M. Glass, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed a letter brief. Petitioner filed a reply brief. This reply brief was received on March 14, 1994, which date began the six-month period for the issuance of this decision. Oral argument, requested by petitioner, was denied.

Commissioner Koenig delivered the decision of the Tax Appeals Tribunal. Commissioner Dugan concurs.

ISSUE

Whether the Division of Taxation properly imposed tax on petitioner, a New York resident, on income earned outside the State of New York.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

On or about April 12, 1986, petitioner, Raymond Rhodes, filed Form IT-201, New York State Resident Income Tax Return, for the tax year 1985. Such return submitted into evidence

indicates wages earned by petitioner for 1985 in the amount of \$44,660.00. Attached to the return was a copy of a Wage and Tax Statement, Form W-2, from International Business Machines ("IBM") for the year 1985 indicating State or local wages in the amount of \$44,659.79.

A Statement of Audit Changes, dated December 29, 1988, was issued to petitioner pertaining to tax year 1985. The Statement of Audit Changes added to current income the unreported wage amount of \$2,237.00 and the same resulted in additional personal income tax due for 1985 in the amount of \$211.47, plus interest. The statement bears the following explanation:

"AS AUTHORIZED BY SECTION 6103(D) OF THE INTERNAL REVENUE CODE, WE HAVE OBTAINED FROM THE INTERNAL REVENUE SERVICE THE AMOUNTS SHOWN ON YOUR FEDERAL TAX RETURN. THE ADJUSTMENT(S) SHOWN BELOW ARE BASED ON DISCREPANCIES FOUND WHEN WE COMPARED THE FEDERAL INFORMATION WITH YOUR NEW YORK RETURN.

"INTEREST IS DUE FOR LATE PAYMENT OR UNDERPAYMENT AT THE APPLICABLE RATE. INTEREST IS MANDATORY UNDER THE LAW.

"THE STARTING POINT FOR COMPUTING YOUR NEW YORK TAX IS FEDERAL ADJUSTED GROSS INCOME. YOUR TAX HAS BEEN RECOMPUTED AS SHOWN.

"WAGE INCOME REPORTED ON YOUR NEW YORK RETURN DOES NOT AGREE WITH THE AMOUNT REPORTED TO US BY THE INTERNAL REVENUE SERVICE."

Petitioner indicated that while employed for IBM he also held a position as a Naval Reserve officer in the Civil Engineering Corps. During an annual training program, as a commander, petitioner performed services for the Navy during February and March 1985 in London. The amount in question, \$2,237.00, was earned as a result of services performed for the U.S. Navy during the training program. Petitioner does not dispute his residency in New York during the period in issue.

The Division of Taxation ("Division") issued to petitioner a Notice of Deficiency dated March 16, 1989 indicating additional personal income tax due for the year 1985 in the amount of \$211.47, plus interest of \$48.05, for a total amount due of \$259.52.

On or about May 31, 1989, petitioner requested a conciliation conference stating his belief that the amount earned by him overseas is not subject to taxation by New York State since its jurisdiction does not extend beyond the borders of the State. On May 1, 1990, a conciliation conference was held and, by a Conciliation Order dated June 8, 1990, the statutory notice was upheld.

Petitioner thereafter requested a hearing before the Division of Tax Appeals. The Division of Tax Appeals received the petition on August 24, 1990. The Division filed its answer on or about August 29, 1991 asserting it properly taxed petitioner as a New York resident.

OPINION

In the determination below, the Administrative Law Judge held that "[a]djusted gross income, defined with reference to 'gross income,' means all income from whatever source derived, including but not limited to compensation for services (Internal Revenue Code §§ 61, 62)" (Determination, conclusion of law "A").

The Administrative Law Judge also held that "the State Legislature and no other branch of government has the power to tax" and, further, "[i]n New York the taxing system is codified in the Real Property Tax Law and the Tax Law, although some tax levies are imposed by other statutes (58 NY Jur, Taxation, § 8)" (Determination, conclusion of law "B").

The Administrative Law Judge further held that: 1) the jurisdiction of the Division of Tax Appeals and the Tax Appeals Tribunal does not encompass challenges to the constitutionality of a statute on its face, and while petitioner claims he does not take issue with the constitutionality of New York's authority to impose taxes, his arguments assert otherwise; 2) at this level of administrative review it is presumed that the statutes are constitutional; and 3) petitioner has not presented any evidence to show that the governing section of the Tax Law was applied unconstitutionally.

Finally, the Administrative Law Judge, relying on our decision in Matter of Robbins (Tax Appeals Tribunal, May 23, 1991), held that the Division established that it properly taxed petitioner as a resident of New York on the income earned outside of New York during 1985.

On exception, petitioner argues the Administrative Law Judge misconstrued the issue and the issue raised by him is jurisdictional limits and not one of constitutionality. Petitioner argues "[l]inking the definition of NY income based on Federal income presupposes NY has the equivalent of the Federal JURISDICTION. Obviously, New York Law is effective ONLY WITHIN NEW YORK STATE, and as defined, improperly extends jurisdiction to the Federal jurisdiction" (Petitioner's exception, ¶ 2).

Petitioner, in referring to certain tax code sections, including Sections 631 and 182, argues that the existing tax code already recognizes New York jurisdiction is limited to income solely sourced within New York.

The Division, in its letter brief states that "[t]he issue before the Tax Appeals Tribunal is whether a New York resident is required to pay income tax on his out-of-state earnings" and argues that "[t]he petitioner's reliance on section 631 is misplaced because the section refers to the tax liability of nonresidents."

The Division argues that the Administrative Law Judge properly held the income in question subject to New York tax.

In reply, petitioner argues that "New York law is not effective beyond the geographic boundaries of the State, hence its taxing jurisdiction is limited to levying taxes ONLY on income produced within New York State" (Petitioner's reply brief, ¶ 2).

Petitioner further argues "[t]he tax code definition of New York income for NY residents without an appropriate exclusion for income produced outside New York State causes the tax jurisdiction to be improperly extended beyond the borders of New York" (Petitioner's reply brief, ¶ 4).

We affirm the determination of the Administrative Law Judge.

While petitioner argues that the issue has been misconstrued by the Administrative Law Judge, we find that the Administrative Law Judge completely and adequately addressed the issue before her as we have already held that the income earned as a New York resident, though outside New York during the period in issue, was to be included in New York taxable income (see, Matter of Robbins, supra). We see no reason to analyze the issue further; nor do we see any reason to hold otherwise and, therefore, affirm the Administrative Law Judge based on her determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Raymond Rhodes is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Raymond Rhodes is denied; and
4. The Notice of Deficiency dated March 16, 1989 is sustained.

DATED: Troy, New York
September 1, 1994

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner