

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :

of :

**PETER N. CANDELA** :

ORDER  
DTA NO. 816295

for Redetermination of a Deficiency or for Refund of New :  
York State Personal Income Tax under Article 22 of the  
Tax Law for the Year 1996. :

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Petitioner Peter N. Candela, P.O. Box 641, Hampton Bays, New York 11946, filed a motion for a rehearing with respect to the determination of the Presiding Officer issued on September 23, 1999. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Peter T. Gumaer, Esq., of counsel).

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

***ISSUE***

Whether petitioner's motion for a rehearing should be granted.

***FINDINGS OF FACT***

We find the following facts.

This matter was the subject of a small claims hearing pursuant to Tax Law § 2012. At issue therein was whether wages received by petitioner were properly held subject to New York State personal income tax.

A hearing was conducted on August 19, 1999 by Presiding Officer James Hoefer. Petitioner appeared at the hearing *pro se*. The Division appeared by Terrence M. Boyle, Esq. (Mac Wyszomirski). Neither party elected to reserve time to file a brief.

On September 23, 1999, the Presiding Officer issued a determination denying the petition and sustaining the Notice of Deficiency issued to petitioner for the 1996 tax year. Additionally, based upon the petition filed, which simply stated that “[n]o assessment for any 1996 income taxes has ever been made against me,” and the arguments presented in support thereof, the Presiding Officer exercised his discretion and assessed petitioner a \$500.00 penalty for filing a frivolous petition with the Division of Tax Appeals (*see*, Tax Law § 2018). By letter dated March 3, 2000, petitioner objected to the determination of the Presiding Officer. Specifically, petitioner objected to the \$500.00 frivolous petition penalty<sup>1</sup> assessed by the Presiding Officer and, furthermore, he objected to the fact that each of his arguments, as set forth in an attachment to his 1996 New York State income tax return, were not individually addressed by the Presiding Officer.

In response, Assistant Chief Administrative Law Judge Daniel J. Ranalli wrote a letter dated March 6, 2000 advising the parties that he was treating petitioner’s March 3, 2000 letter as a motion to reopen the hearing and he provided the Division of Taxation (hereinafter the “Division”) with 30 days to respond. The Division responded by letter dated March 30, 2000 stating that petitioner failed to set forth any grounds to have his case reopened and, thus, said motion should be denied.

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<sup>1</sup>Throughout his letter dated March 3, 2000, petitioner incorrectly refers to the frivolous petition penalty as a penalty imposed by the Presiding Officer for petitioner filing a frivolous 1996 income tax return.

On May 3, 2000, the Secretary to the Tax Appeals Tribunal informed the parties that the motion had been forwarded to his office from the Assistant Chief Administrative Law Judge for an order.

### ***ORDER***

In his letter, petitioner states that:

by definition a hearing must hear and refute arguments presented on one's side of a case. The arguments must be refuted or the exercise is a mere pretext for a hearing. Eleven (11) arguments were presented in DTA NO.816295, none of which were addressed or refuted (Petitioner's letter dated March 3, 2000, p. 1).

We begin by noting that Tax Law § 2012 authorizes small claims hearings at the request of the petitioner. The statute provides that the hearing be informal and that the Presiding Officer has the discretion to accept such evidence and testimony that he deems necessary or desirable for a just and equitable determination. The statute also provides that his determination would be conclusive on all parties and not subject to any review. However, pursuant to 20 NYCRR 3000.13(h)(2), a motion may be made by either party requesting a rehearing upon proof or allegation of misconduct by the Presiding Officer.

In this case, petitioner argues that he was entitled to have each of his arguments addressed rather than a summary dismissal of his arguments as frivolous without any analysis of certain Supreme Court cases upon which he relied. As we held in *Matter of Insulpane Indus.* (Tax Appeals Tribunal, July 12, 1990), the *misconduct* which Tax Law § 2012 addresses is the objectionable behavior of a Presiding Officer as opposed to a potential error by that individual in an analysis of the law. Therefore, in the absence of any allegation or proof that the Presiding

Officer's conduct was in any way objectionable, we deny petitioner's request for a rehearing of this matter.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the motion for a rehearing of Peter N. Candela is denied.

DATED: Troy, New York  
June 22, 2000

/s/Donald C. DeWitt

Donald C. DeWitt  
President

/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner

/s/Joseph W. Pinto, Jr.

Joseph W. Pinto, Jr.