STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
WILLIAM D. AND LOIS B. ROTBLUT	:	DECISION DTA NO. 822418
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the New York City Administrative Code for the Year 2005.	:	

Petitioners, William D. and Lois B. Rotblut, filed an exception to the determination of the Administrative Law Judge issued on February 12, 2009. Petitioners appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Sarah Dasenbrock, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioners did not file a brief in reply.

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

ISSUE

Whether the Division of Taxation properly disallowed petitioners' refund claim because petitioners failed to properly compute their income tax due, using the tax form instructions.

FINDINGS OF FACT

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

Petitioners timely filed their 2005 New York State and New York City personal income tax return (form IT-201), under the filing status married filing joint return. Attached to the motion papers of the Division of Taxation ("Division") is a copy of petitioners' return, which appears to be a computerized version of the tax form.

On their return, petitioners computed their New York adjusted gross income (AGI) to be $613,462.00 and properly entered that amount at line 33 of their return. Petitioners computed their New York taxable income to be $565,907.00 and properly entered this amount on line 38 of the return. On the following line of the return, line 39, petitioners were directed to compute their New York State tax on the amount entered on line 38 above. It must be noted that on the return used by petitioners, line 39 states as follows: "NY State tax on line 38 amount (see **Tax Computation** in the instructions)." On line 39, petitioners entered the amount of $39,931.00.

Official notice is taken of the New York State Department of Taxation and Finance's IT-RP-1, Resident Income Tax Forms and Instructions for 2005. On line 39 of form IT-201, which is included within such forms and instructions, it states as follows: "New York State tax on line 38 amount (see page 97 and **Tax Computation** on pages 52 through 54)."

Page 97 of the instructions, pertaining to line 39 of the form IT-201, states:

> Is **line 33** (your New York AGI) $100,000 or less?
>
> If **Yes**, ...
>
> If **No**, see Tax Computation – New York AGI of more than $100,000, on pages 52 and 53.

Since petitioners' New York AGI was $613,462.00, i.e., greater than $100,000.00, they were directed to pages 52 and 53 of the instructions, which pertain to New York State tax computation for taxpayers whose New York AGI was more than $100,000.00. On these pages,

there are five tax computation worksheets for varying amounts of New York AGI in excess of $100,000.00, the last of which, tax computation worksheet 5 on page 53, pertains to New York AGI of more than $500,000.00. This worksheet directs the taxpayer to enter the amount from line 38 of form IT-201 (which in the case of petitioners was $565,907.00) and then multiply this amount by 7.7% (.077). Had petitioners followed these instructions, they would have computed their tax due to be $565,907.00 times .077, or $43,575.00, rather than the $39,931.00 that they computed using the New York State tax rate schedule found on page 54 of the instructions.

Line 47 of their return, where petitioners were directed to compute their New York City resident tax on the line 38 amount (taxable income), states: "New York City resident tax on **line 38** amount (see **Tax Computation** in the instructions)." On line 47, petitioners entered the amount of $22,368.00.

On the form IT-201, which is included in the New York State Department of Taxation and Finance's IT-RP-1, Resident Income Tax Forms and Instructions for 2005, line 47 of form IT-201 states as follows: "New York City resident tax on **line 38** amount (see page 98 and **Tax Computation** on pages 63 and 64)."

Page 98 of the instructions, pertaining to line 47 of the form IT-201, states in relevant part:

> Is **line 33** (your New York AGI) $150,000 or less?
>
> If **Yes**, ...
>
> If **No**, see Tax Computation - New York AGI of more than $150,000, on page 63.

Since petitioners' New York AGI was $613,462.00, i.e., greater than $150,000.00, they were directed to page 63 of the instructions, which pertains to New York City tax computation for taxpayers whose New York AGI was greater than $150,000.00. On page 63, there are two tax

computation worksheets, tax computation worksheet 6 for taxpayers whose New York AGI is more than $150,000.00 but not more than $500,000.00, and tax computation worksheet 7 for taxpayers (like petitioners) whose New York AGI is more than $500,000.00. This worksheet directs the taxpayer to enter the amount from line 38 of form IT-201 (which in the case of petitioners was $565,907.00) and then multiply this amount by 4.45% (.0445). Had petitioners followed these instructions, they would have computed their New York City resident tax to be $565,907.00 times .0445, or $25,183.00, rather than the $22,368.00 that they computed using the New York City tax rate schedule found on page 64 of the instructions.[1]

As a result of petitioners' failure to properly follow the instructions set forth on the 2005 form IT-201, they underreported and underpaid their New York State and New York City tax liability by the amount of $3,644.00 and $2,815.00, respectively, or a total of $6,459.00. Accordingly, on June 26, 2006, the Division issued a Notice and Demand for Payment of Tax Due to petitioners in the amount of $6,458.70, plus interest of $2.90, for a total amount due of $6,461.60 for the 2005 tax year.

On June 21, 2007, petitioners paid the entire amount due, which, with the accrual of interest on the deficiencies of State and City taxes, was $7,158.98. Thereafter, petitioners, timely filed a claim for refund of this additional amount paid.

On August 17, 2007, the Division issued a Notice of Disallowance to petitioners, which stated, in relevant part, as follows:

> Your claim for refund is based on the fact that a printing error was made in the tax tables you used in computation of your tax. There is no provision in the New York State Tax Law that allows an adjustment to tax based on

[1] It must be noted that even erroneously using the tax rate schedule at page 64, petitioners computed their New York City tax to be $22,368.00 when the correct amount was, in fact, $22,539.00.

errors in the instructions used, even though printed in error by this Department.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that 20 NYCRR 3000.9(b)(1) provides that in order to prevail on summary determination, it must be established that no material and triable issue of fact is presented.

The Administrative Law Judge found that after reviewing the New York State Department of Taxation and Finance's IT-RP-1, Resident Income Tax Forms and Instructions for 2005, it is clear that had petitioners followed the directions on form IT-201, they would have properly computed their State and City tax liabilities for the year.

The Administrative Law Judge noted that the tax form used by petitioners to file their 2005 State and City returns was slightly different from the form included in the official IT-RP-1 Resident Income Tax Forms and Instructions. The Administrative Law Judge concluded that although the instructions were not as specific as on the official form included in IT-RP-1, they did provide clear directions for computing State and City tax liability. Accordingly, he concluded that petitioners did not follow the instructions in computing their State and City tax liabilities.

Since there were no material issues of fact remaining that would necessitate a hearing, the Administrative Law Judge granted the Division's motion for summary determination.

ARGUMENTS ON EXCEPTION

On exception, petitioners argue that they were justified in computing their tax based upon specific language contained in the tax tables provided by the New York State Tax Department of

Tax and Finance for "income in excess of $500,000.00." Moreover, petitioners claim that the Division has failed to meet its burden to offer any evidence to prove otherwise.

The Division argues that the determination of the Administrative Law Judge should be affirmed in all respects.

OPINION

As the Administrative Law Judge noted, section 3000.9 of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides, in part, that a motion for summary determination may be granted:

> . . . if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

That section further provides that a motion for summary determination is subject to the same provision as a motion for summary judgment pursuant to CPLR § 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (***see, Winegrad v. New York Univ. Med. Ctr.***, 64 NY2d 851 [1985], ***citing Zuckerman v. City of New York***, 49 NY2d 557 [1980]).

Generally, to defeat a motion for summary judgment, the opponent must produce evidence in admissible form sufficient to raise an issue of fact requiring a trial (***see***, CPLR 3212[b]). Unsubstantiated allegations or assertions are insufficient to raise an issue of fact (***see, Alvord & Swift v. Muller Constr. Co.***, 46 NY2d 276 [1978]). We agree with the Administrative Law Judge that had petitioners followed the directions on form IT-201, they would have correctly computed their State and City tax liabilities for the year 2005.

A mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (***see***, 54 Am Jur2d Mistake, Accident or Surprise § 4; ***see also***, ***Wendel Found. v. Moredall Realty Corp.***, 176 Misc 1006 [Sup Ct, New York County 1941]). Whereas, a mistake of law has been defined as acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts (***see***, 54 Am Jur 2d Mistake, Accident or Surprise § 8; ***see also***, ***Wendel Found. v. Moredall Realty Corp.***, ***supra***). In this case, it is clear that petitioners claim for refund is based on the fact that a printing error was made in the tax tables used in the computation of their tax. There is no provision in the Tax Law that allows an adjustment to tax based on errors in the instructions used, even if printed in error by the Division. Thus, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of William D. and Lois B. Rotblut is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of William D. and Lois B. Rotblut is denied; and

4. The Notice of Disallowance dated August 17, 2007 is sustained.

DATED:Troy, New York
October 15, 2009

/s/ Charles H. Nesbitt
Charles H. Nesbitt
President

/s/ Carroll R. Jenkins
Carroll R. Jenkins
Commissioner