

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
CHARLES L. KYTE : DECISION
for Redetermination of a Deficiency or for Refund : DTA NO. 823713
of New York State and New York City Personal :
Income Taxes under Article 22 of the Tax Law and :
the Administrative Code of the City of New York :
for the Year 2006. :

Petitioner, Charles L. Kyte, filed an exception to the order of the Administrative Law Judge issued on October 28, 2010. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark Volk, Esq. (John E. Matthews, Esq., of counsel).

Neither party filed a brief. Petitioner's request for oral argument was denied.

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

ISSUE

Whether petitioner is entitled to an administrative hearing with respect to a certain Notice of Additional Tax Due issued to him by the Division of Taxation January 25, 2010.

FINDINGS OF FACT

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

The Division of Taxation (Division) issued to petitioner, Charles L. Kyte, a Notice of Additional Tax Due (Notice No. L-033233109-9), seeking payment of New York State and New

York City personal income tax due for the tax year 2006.

The Notice, dated January 25, 2010, provides, in part, as follows:

New York State has received information from the Internal Revenue Service (IRS) showing they adjusted your 2006 federal income tax return.

The IRS and New York State (NYS) are two separate taxing authorities. When the IRS changes or adjusts your federal income tax return, it may also affect your NYS income tax return. This can result in two different bills, one from the IRS and one from NYS.

NYS Tax Law requires you to report any changes made to your federal income tax return within ninety (90) days from the final IRS determination. We have no record that you reported the federal changes to NYS. Therefore, we have recomputed your New York tax(es) to include the federal changes.

Any payment you made to the IRS to satisfy the federal changes is a payment of federal tax. NY tax is still due as a result of the federal changes.

Our records indicate you were sent notification from the Internal Revenue Service on 03/10/2008, of the following changes to your 2006 federal income tax return.

<u>Changed Items</u>	<u>Net Change</u>	<u>Payer</u>
Dividend	\$5.00	From federal change
Pension annuity txb	\$13,975.00	Vanguard Fiduciary Trust Comp
Unemployment comp	\$11,178.00	From federal change

The Notice of Additional Tax Due assessed New York State and New York City tax due of \$2,619.63, plus interest.

On June 28, 2010, petitioner filed a petition with the Division of Tax Appeals protesting the Notice of Additional Tax Due.

On July 9, 2010, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition. The notice of intent provided, in relevant part, as follows:

Pursuant to § 173-a of the Tax Law, any notice of additional tax due or any notice and demand issued to a taxpayer without the issuance of a notice of determination or a notice of deficiency because of a mathematical or clerical error on a return or for failure to timely pay the tax due shown on a return shall not give that taxpayer a right to a hearing in the Division of Tax Appeals. The only option for such a

taxpayer, is to pay the tax, apply for a refund and then petition for a hearing if the refund claim is denied.

THE ORDER OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge dismissed the subject petition because Tax Law § 173-a specifically denies taxpayers the right to a hearing before the Division of Tax Appeals on a Notice of Additional Tax Due.

ARGUMENTS ON EXCEPTION

Petitioner did not address Tax Law § 173-a, upon which the petition was dismissed. Rather, petitioner makes substantive arguments regarding the subject Notice of Additional Tax Due, asserting that the Division had previously audited him and determined that he had no outstanding liability.

OPINION

We affirm the determination of the Administrative Law Judge.

Tax Law § 2006(4) provides that the function of this Tribunal is as follows: To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, *unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter* (emphasis added).

Tax Law § 659 provides that a taxpayer must report changes or corrections to federal taxable income, as corrected by the Internal Revenue Service, to the Division within 90 days after the final determination of such change or correction and either concede to the accuracy of the federal change or state a basis for asserting that the change or correction is erroneous. If the federal change or correction is not timely reported, as is the case herein, the Division is authorized by Tax Law § 681(e) to issue a Notice of Additional Tax Due. The Division may issue such notice at any time (Tax Law § 683[c][1][C]).

Tax Law § 173-a specifically provides that the issuance of a Notice of Additional Tax Due shall not be construed as a notice that gives the taxpayer the right to a hearing before the Division of Tax Appeals and the Tax Appeals Tribunal (Tax Law § 173-a[2]). Accordingly, as a matter of law, Tax Law § 173-a precludes petitioner from obtaining a hearing with respect to the subject Notice of Additional Tax Due.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Charles L. Kyte is denied;
2. The order of the Administrative Law Judge is affirmed;
3. The petition of Charles L. Kyte is denied;
4. The Notice of Additional Tax Due dated January 25, 2010, is sustained.

DATED:Troy, New York
June 9, 2011

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

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

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner