

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petitions	:	
of	:	
<b>ROBERT GETSO</b>	:	DECISION
for Redetermination of Deficiencies or for	:	DTA NOS. 825660 AND
Refund of New York State and New York City	:	825824
Personal Income Tax under Article 22 of the Tax	:	
Law and the New York City Administrative Code	:	
for the Years 2008 and 2009.	:	

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Petitioner, Robert Getso, filed an exception to the order of the Administrative Law Judge issued on October 9, 2014. Petitioner appeared pro se and by Timothy J. Landers, Administrator, Estate of Robert Getso. The Division of Taxation appeared by Amanda Hiller, Esq. (Justine Clarke Caplan, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Petitioner's request for oral argument was denied. The six-month period for the issuance of this decision began on July 13, 2015, the date of the last correspondence with petitioner's administrator.

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

***ISSUE***

Whether petitioner has presented adequate grounds to vacate a default determination.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge, except for findings of

fact 1 and 13, which we have modified to more fully reflect the record. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

1. On May 9, 2013 and August 14, 2013, petitioner, Robert Getso, filed petitions with the Division of Tax Appeals protesting notices of deficiency issued by the Division of Taxation (Division). Attached to the respective petitions were conciliation default orders issued by the Division's Bureau of Conciliation and Mediation Services (BCMS). The petitions each allege that petitioner should not have been defaulted for failing to appear at the respective conciliation conferences because a continuance should have been granted. The petitions further allege that BCMS ignored documentation of petitioner's medical disability.

2. In its answers to the petitions, the Division denied petitioner's allegations and alleged that the notices under protest were issued based upon information received from the Internal Revenue Service that increased the amount of income that petitioner reported on his New York State and City tax returns for the years 2008 and 2009.

3. On December 23, 2013, the calendar clerk of the Division of Tax Appeals sent two notices of small claims hearing to petitioner and the Division advising them that a hearing had been scheduled for Monday, January 27, 2014 at 1:15 P.M., at the Empire State Development Corporation, 653 Third Avenue, in New York, New York.

4. On January 10, 2014, petitioner requested an adjournment of the January 27, 2014 small claims hearing based upon a medical disability. Petitioner presented two memoranda dated January 18, 2007 and March 20, 2008, respectively, from a physician that detailed the various illnesses for which petitioner was being treated. The memoranda did not make any mention of petitioner's ability to travel being restricted.

5. By letter dated January 15, 2014, the Presiding Officer granted petitioner's request for an adjournment. The letter went on to state that no additional adjournments would be granted.

6. On March 17, 2014, the calendar clerk of the Division of Tax Appeals sent two final notices of small claims hearing to petitioner and the Division advising them that a hearing had been scheduled for Wednesday, April 23, 2014 at 10:45 A.M., at the Metro-NYC Regional Office, 15 Metro Tech Center, in Brooklyn, New York.

7. On April 9, 2014, petitioner requested an adjournment of the April 23, 2014 small claims hearing based upon a medical disability. Attached to his request was a copy of the January 18, 2007 memorandum referred to in finding of fact 4.

8. By letter dated April 14, 2014, Presiding Officer Barbara Russo denied petitioner's request for an additional adjournment.

9. By facsimile of April 18, 2014, petitioner reiterated his request for an adjournment citing illness and medical disability as the reasons therefor.

10. By letter of April 18, 2014, Presiding Officer Barbara Russo denied petitioner's second request for an additional adjournment. The Presiding Officer pointed out that the medical documentation previously submitted by petitioner did not indicate that petitioner's medical condition prohibited him from attending a hearing.

11. On April 23, 2014, at 10:45 A.M., Presiding Officer Barbara Russo commenced a hearing in the ***Matter of Robert Getso***. Petitioner did not appear at the hearing and a default was duly noted.

12. On May 22, 2014, Presiding Officer Russo issued a default determination against petitioner, denying the petitions in this matter.

13. On June 11, 2014, petitioner filed an application with the Supervising Administrative Law Judge to vacate the default determination. In his application, petitioner alleged that the Presiding Officer erroneously refused to grant him an adjournment after he provided medical documentation detailing his illnesses that prevented him from appearing for the hearing. Petitioner did not provide any additional medical documentation with his application. As to the merits, petitioner claimed that the Division's own records show that the amount of tax asserted due is in error.

#### ***THE ORDER OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge denied petitioner's application to vacate the default determination, finding that petitioner failed to establish either a valid excuse for his failure to appear at the scheduled small claims hearing or a meritorious case, the two conditions necessary to obtain relief from a default determination.

#### ***ARGUMENTS ON EXCEPTION***

On exception, petitioner continues to argue that the submitted medical documentation detailing his illnesses provides a valid excuse for his failure to appear at the scheduled hearing. Regarding the merits of his case, petitioner asserts that the Division owes him money.

The Division maintains that petitioner has shown neither a valid reason for his default nor a meritorious case.

#### ***OPINION***

We affirm the order of the Administrative Law Judge.

With respect to small claims hearings, our Rules of Practice and Procedure (Rules) provide that “[i]n the event a party or the party’s representative does not appear at a scheduled

hearing and an adjournment has not been granted, the presiding officer shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear" (20 NYCRR 3000.13 [d] [2]).

Here, petitioner did not appear at the scheduled hearing or obtain an adjournment. Accordingly, the Presiding Officer properly rendered a default determination against him pursuant to 20 NYCRR 3000.13 (d) (2) (*see Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015).

Our Rules further provide that, "[u]pon written application to the supervising administrative law judge, a default determination may be vacated where the [defaulting] party shows an excuse for the default *and* a meritorious case" (20 NYCRR 3000.13 [d] [3] [emphasis added]).

In order to establish a meritorious case for purposes of vacating a default, petitioner must make a *prima facie* showing of legal merit, and may not rely on conclusory statements unsupported by the facts (*see Matter of Morano's Jewelers of Fifth Avenue*, Tax Appeals Tribunal, May 4, 1989). Petitioner's claim on exception regarding the merits of his case consists solely of such a conclusory statement, as he simply contends that the Division owes him money. This contention is plainly insufficient to make the required *prima facie* showing. Having failed to establish a meritorious case, petitioner's exception must be denied.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Robert Getso is denied; and

2. The order of the Administrative Law Judge denying petitioner's application to vacate the default determination is affirmed.

DATED: Albany, New York  
January 13, 2016

/s/      Roberta Moseley Nero  
Roberta Moseley Nero  
President

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

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