

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SAMUEL WILLIAMS	:	ORDER
for Redetermination of a Deficiency or for	:	DTA NO. 810552
Refund of Personal Income Taxes under the	:	
Administrative Code of the City of New York	:	
and Article 22 of the Tax Law for the Year	:	
1987.	:	

Pursuant to section 3000.5(b)(1)(ii) of the rules of the Tax Appeals Tribunal, petitioner Samuel Williams, 688 Rushing Springs Road, Lincoln, Alabama 35096 brings a motion, dated November 16, 1992, for an order dismissing the petition on the ground that the Division of Tax Appeals lacks subject matter jurisdiction. Petitioner also brings a motion, dated January 22, 1993, for an order precluding the Division of Taxation from giving evidence at hearing of items of which particulars have been demanded and not delivered. The Division of Taxation by its representative William F. Collins, Esq. (Arnold M. Glass, Esq., of counsel) filed a letter in opposition to the motion to dismiss, dated December 30, 1992. Based upon the motion papers, the letter submitted in opposition to the motion and upon all pleadings and documents submitted, Jean Corigliano, Administrative Law Judge, renders the following order.

Petitioner filed a petition with the Division of Tax Appeals on February 26, 1992. Attached to his petition was a Notice of Deficiency, dated June 4, 1990, asserting a deficiency of New York personal income tax in the amount of \$4,746.39 plus penalty and interest. Petitioner alleged in his petition that there is no mandatory requirement of payment of New York State income taxes and that the assertion of tax violates the fourth, fifth, seventh and ninth amendments of the United States Constitution. He further alleged that the matter at issue should be resolved as a proceeding before a Federal court. The Division of Taxation ("Division") filed an answer to the petition, dated April 24, 1992.

On or about June 3, 1992, petitioner made a demand for a bill of particulars. Items 1 and 2 of petitioner's demand refer entirely to allegations made and issues raised in his own petition. As such, they are inappropriate for a demand for a bill of particulars (see, 20 NYCRR 3000.6[a][1]). Generally construed, Item 3 asks the Division to provide the legal grounds for its assertion that he was required to file New York State and New York City personal income tax returns (paragraph 3 of the answer). Neither the notice of deficiency nor the Division's answer provides statutory authority for its position that petitioner was required to file such returns.

The Division is authorized, pursuant to Tax Law § 681(a), to issue a notice of deficiency if it determines that there is a deficiency of income tax. Such a notice becomes an assessment of the amount of tax specified in the notice, together with interest and penalties, unless the petitioner files a petition with the Division of Tax Appeals within 90 days of the mailing of the notice of deficiency. Petitioner commenced this proceeding by filing a timely petition; therefore, he is entitled to a hearing before the Division of Tax Appeals where he may present his arguments for cancelling the notice of deficiency (Tax Law §§ 2006[4]; 2008). Petitioner may avail himself of his right to a hearing, or not, as he sees fit.

Petitioner's motion to preclude was not received by the Division of Tax Appeals until January 26, 1993. A hearing in this matter is scheduled on February 12, 1993. At that hearing, the Division can be expected to cite the statutory authority which supports its assertion of a deficiency against petitioner. Petitioner will then be given ample opportunity to respond.

Petitioner's motions for an order dismissing the petition and an order of preclusion are denied.

DATED: Troy, New York
February 1, 1993

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE