

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**PETER N. CANDELA** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 816295  
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 petition 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.

A small claims hearing was held before James Hofer, Presiding Officer, at the offices of the Division of Tax Appeals, State Office Building, Hauppauge, New York on August 19, 1999 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Mac Wyszomirski).

Since neither party elected to reserve time for the submission of post-hearing briefs, the three-month period for the issuance of this determination began as of the date the hearing was held.

***ISSUE***

Whether wages received by petitioner were properly held subject to New York State personal income tax.

***FINDINGS OF FACT***

1. On or about April 15, 1997, the Division of Taxation (“Division”) received from petitioner herein, Peter N. Candela, a Form IT-201 Resident Income Tax Return for 1996. On the return petitioner entered his name and address; reported a filing status of married filing separate return and signed the return. The balance of the return contained all zeros with respect to the amounts of income, deductions, tax, credits, payments, refund or balance due. Attached to the return were two wage and tax statements which reported that petitioner had received wages totaling \$26,679.83; had a public employee section 414(h) retirement contribution of \$732.26 and had no Federal or New York State income tax withheld from his wages. Also attached to the return was a statement wherein petitioner indicated the following:

(A) that he believes that no section of the Internal Revenue Code establishes an income tax liability or provides that income taxes have to be paid on the basis of a return;

(B) that the return was not being filed voluntarily;

(C) that the “Privacy Act Notice” informs him that he is not required to file a return;

(D) that information required on the return can be used to impose criminal and civil fines and penalties in violation of his Fifth Amendment right “not to be compelled to be a witness against myself”;

(E) that his return submitted with zeros constitutes the filing of a return;

(F) that he had no earnings in 1996 that would have been taxable under the Corporation Excise Tax Act of 1909 as income, thus he can only swear to having zero income for 1996;

(G) that his 1996 return does not constitute a frivolous return;

(H) that no assessment for 1996 income taxes has been made against him;

(I) that there is no authority for the Sate to change his return;

(J) that if in disagreement with his return petitioner seeks a “face to face” hearing; and

(K) that he will hold all State employees who disregard the statutes and relevant precedent accountable pursuant to law.

2. On October 27, 1997, the Division issued a Notice of Deficiency to petitioner asserting that \$1,251.00 of New York State personal income tax was due for 1996 together with interest of \$54.62 and penalty<sup>1</sup> of \$155.48. The proposed additional tax due was computed in the following manner:

Wages per two wage and tax statements	\$26,679.83
Public employee § 414(h) retirement contribution	<u>732.26</u>
Total income	27,412.09
Less standard deduction for married filing separately	<u>6,175.00</u>
Taxable income	<u>\$21,237.09</u>
Tax per tax table	\$ <u>1,251.00</u>

3. A timely petition was filed with the Division of Tax Appeals and on page two, section six of said petition, where a taxpayer is to set forth the alleged errors made by the Division and also assert supporting facts, the following statement was entered “ [N]o assessment for any 1996 income taxes has ever been made against me.” Appended to the petition was a copy of the Notice of Deficiency dated October 27, 1997. At the small claims hearing held herein petitioner made the same claims and arguments as set forth in the statement attached to the 1996 return.

### ***CONCLUSIONS OF LAW***

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<sup>1</sup> The record herein does not disclose what penalty or penalties were asserted due in the Notice of Deficiency. Petitioner, however, did not present any arguments with respect to said penalty or penalties and furthermore, he has adduced no credible evidence to show that the penalty or penalties should be waived or abated. Accordingly, the penalty or penalties asserted due in the Notice of Deficiency will not be addressed hereinafter.

A. Petitioner's allegations in the instant matter are groundless and completely lacking in substance or merit. To indulge petitioner very briefly, I note that the arguments raised herein are not novel and have been addressed many times in various Federal courts and also by the Tax Appeals Tribunal.<sup>2</sup> Petitioner's wage income was properly subject to both Federal and New York State personal income tax (IRC § 1; Treas Reg § 1.1-1[a], [b]; Tax Law §§ 601, 611, 612).

B. Tax Law § 2018 provides as follows:

**Frivolous petitions.**-- If any petitioner commences or maintains a proceeding in the division of tax appeals primarily for delay, or if the petitioner's position in such proceeding is frivolous, then the tax appeals tribunal may impose a penalty against such petitioner of not more than five hundred dollars. The tax appeals tribunal shall promulgate rules and regulations as to what constitutes a frivolous position.

The Tribunal's regulations, specifically 20 NYCRR 3000.21, provide that the Tribunal may on its own motion impose the Tax Law § 2018 penalty. Said regulation further provides that the following are examples of frivolous positions:

- (a) that wages are not taxable as income;
- (b) that petitioner is not liable for income tax because petitioner has not exercised any privileges of government;
- (c) that the income tax system is based on voluntary compliance and petitioner therefore need not file a return;
- (d) that Federal Reserve Notes are not "legal tender" or "dollars," and petitioner therefore cannot measure his or her income; and
- (e) that only states can be billed and taxed directly.

C. In the instant matter the record clearly reflects that petitioner's positions are frivolous and have no basis in fact or law. Accordingly, on my own motion,<sup>3</sup> a penalty of \$500.00 is

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<sup>2</sup> *See*, 1998 CCH Standard Federal Tax Reporter, Vol.14, par. 40,843 and the numerous cases cited therein and *Matter of Lang*, Tax Appeals Tribunal, July 8, 1993.

<sup>3</sup> *See, Heun v. Commr.* (73 TCM 3008).

hereby imposed pursuant to Tax Law § 2018 and 20 NYCRR 3000.21 on the grounds that petitioner's position in this proceeding is frivolous.

D. The petition of Peter N. Candela is in all respects denied; the Notice of Deficiency, dated October 27, 1997, is sustained and, in accordance with Conclusion of Law "C", a penalty of \$500.00, which is in addition to the penalty or penalties asserted due in the Notice of Deficiency, is hereby imposed for the filing of a frivolous petition.

DATED: Troy, New York  
SEPTEMBER 23, 1999

/S/ JAMES HOEFER  
PRESIDING OFFICER