

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
CHRISTIANE C. MAY : DETERMINATION
for Redetermination of a Deficiency of for Refund of New : DTA NO. 817622
York State Personal Income Tax under Article 22 of the :
Tax Law for the Year 1996. :

Petitioner, Christiane C. May, 204 Stanton Drive, Syracuse, New York 13214, 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 Arthur Johnson, Presiding Officer, at the offices of the Division of Tax Appeals, 333 East Washington Street, Syracuse, New York, on October 27, 2000 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (John Koagel).

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Christiane C. May, filed a timely New York State Resident Income Tax Return (Form IT-201) for the year 1996. The return contained zeros with respect to the amounts of income, deductions, tax and credits. Under "Payments," petitioner reported New York State tax withheld of \$639.37 and claimed a refund of same. The refund claimed equaled the State income tax withheld by petitioner's employer during 1996 as indicated by the wage and tax

statement (Form W-2) attached to the return. The W-2 also indicated total wage income for petitioner of \$27,826.28 received from Caring Coalition of CNY, Inc. Petitioner attached to her State return a copy of her Federal return and a two-page statement listing several reasons and citing certain court cases as a basis for not reporting her wages as subject to Federal and State income taxes.

2. On November 16, 1998, the Division of Taxation (“Division”) issued a Statement of Proposed Audit Changes to petitioner which computed New York State adjusted gross income of \$31,010.00 and a total tax liability of \$1,422.00. The statement indicated that petitioner received additional wages of \$3,183.00 from Iroquois Nursing Home, Inc. The Division allowed the standard deduction of \$7,400.00 and petitioner was given credit of \$639.00 for the tax withheld per the wage and tax statement, leaving an underpayment of \$783.00. On January 11, 1999, the Division issued a Notice of Deficiency against petitioner asserting additional tax due of \$783.00, plus interest of \$109.81 and penalty of \$159.63, for a total of \$1,052.44. The penalty was assessed pursuant to Tax Law § 685(b)(1) and (2) for negligence and Tax Law § 685(c) for underestimation of her New York State income tax.

3. Petitioner maintains that the New York State Constitution is the defining authority for all New York State Consolidated Laws and in accordance with the Constitution the only salaries, wages and other compensation subject to taxation under Article 22 of the Tax Law are those paid to officers and employees of the State and its subdivisions and agencies. Petitioner believes that the wages she earned in private sector occupation as a registered nurse are therefore not subject to New York State income tax under the Constitution.

4. The Division took the position that the New York State Constitution clearly gives the Legislature the power to tax, and pursuant to Internal Revenue Code § 1; Treas Reg § 1.1-1[a],

[b]; and Tax Law §§ 601, 611 and 612 petitioner's wages are subject to both Federal and New York State personal income tax.

The Division's representative at the hearing requested that the Division of Tax Appeals not impose a penalty for filing a frivolous petition pursuant to Tax Law § 2018 and 20 NYCRR 3000.21.

CONCLUSIONS OF LAW

A. Petitioner's reasoning that her wages were not subject to New York State personal income tax as stated in the attachment to her 1996 tax return and also based on her interpretation of the New York State Constitution 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.¹ 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. The petition of Christiane C. May is in all respects denied and the Notice of Deficiency, dated January 11, 1999, is sustained.

DATED: Troy, New York
January 25, 2001

/s/ Arthur Johnson
PRESIDING OFFICER

¹ See, 1998 CCH Standard Federal Tax Reporter, Vol.14, ¶ 40,843, and the numerous cases cited therein and *Matter of Lang*, Tax Appeals Tribunal, July 8, 1993.