

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
EDWIN L. WILLIAMS	:	SMALL CLAIMS DETERMINATION DTA NO. 819907
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax pursuant to the Administrative Code of the City of New York for the Year 2002.	:	

Petitioner, Edwin L. Williams, 921 East 223rd Street, Bronx, New York 10466, 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 and New York City personal income tax pursuant to the Administrative Code of the City of New York for the year 2002.

A small claims hearing was held before James Hoefler, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York, on January 20, 2005 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Mac Wyszomirski).

Since neither party reserved time to submit a post hearing brief, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

ISSUE

Whether the Division of Taxation properly determined that petitioner owed \$250.46 of New York State and City personal income tax for the 2002 tax year.

FINDINGS OF FACT

1. On or before April 15, 2003, petitioner, Edwin L. Williams, filed a timely 2002 New York State and City Resident Income Tax Return with the Division of Taxation (“Division”). On his return, petitioner reported a total tax liability of \$1,206.00 and total payments of tax, via tax withheld from wages, of \$939.04. Petitioner’s return for 2002 should have shown a tax due of \$266.96 ($\$1,206.00 - \939.04); however, the return claimed a refund of \$267.04 apparently as the result of petitioner’s erroneously entering the tax due on the refund line of the return instead of the balance due line of the return.

2. Upon processing petitioner’s 2002 tax return, the Division did not allow petitioner the refund as claimed on his return, but instead issued a Notice and Demand for Payment of Tax Due, dated May 5, 2003, asserting that \$250.46 of New York State and City personal income tax was due, together with interest of \$.74 and penalty of \$1.12. The Notice and Demand for Payment of Tax Due corrected several mathematical errors on petitioner’s return and determined that his total tax liability for 2002 was \$1,252.00, and not \$1,206.00 as reported on the return. Petitioner was given credit for payments totaling \$1,001.54, which amount included the tax withheld from wages of \$939.04 as claimed on the return and a New York City school tax credit of \$62.50, a credit which petitioner had not claimed on his return. The net effect of the Division’s adjustments, as proposed in its Notice and Demand for Payment of Tax Due, was to reduce the balance due for 2002 from \$266.96 to \$250.46.

SUMMARY OF PETITIONER’S POSITION

3. Petitioner does not contest the Division’s determination that his unpaid tax liability for 2002 totals the \$250.46 asserted due in the Notice and Demand for Payment of Tax Due dated May 5, 2003. Petitioner has been engaged in an ongoing tenant/landlord dispute and this

controversy apparently involved both the New York City Housing Authority and the Civil Court of the City of New York. Petitioner argues that he has been denied justice in his tenant/landlord dispute and that “once I get justice from the Housing Department then I will pay the tax.”

CONCLUSIONS OF LAW

A. Tax Law § 689(e) places the burden of proof on petitioner to show that the Division’s notice is erroneous, and not only has petitioner failed to submit any evidence or argument to prove that the Division’s notice is incorrect, he has, in fact, conceded that the Division properly determined that he owes \$250.46 of tax due for the 2002 tax year. However, petitioner continues to contest the assessment, even though he concedes its accuracy, as a matter of principle due to the alleged injustices he has suffered at the hands of the New York City Housing Authority in his tenant/landlord dispute. The Division of Tax Appeals clearly lacks jurisdiction to address petitioner’s dispute with the New York City Housing Authority. Tax Law § 2000 charges the Division of Tax Appeals with the responsibility of “providing the public with a just system of resolving controversies with [the] department of taxation and finance.” Here, there is no dispute that the arguments raised by petitioner in this proceeding do not pertain to a controversy with the Department of Taxation and Finance and therefore I have no jurisdiction or authority to entertain petitioner’s arguments (*see, Matter of Eisenstein*, Tax Appeals Tribunal, March 27, 2003).

B. The petition of Edwin L. Williams is denied and the Division’s Notice and Demand for Payment of Tax Due dated May 5, 2003 is hereby sustained.

DATED: Troy, New York
April 14, 2005

/s/ James Hoefer
PRESIDING OFFICER