

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>SIMONE Y. SMALL</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 821287</b>
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Tax under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for the	:	
Year 2002.	:	

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Petitioner, Simone Y. Small, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2002.

A hearing was held before Arthur S. Bray, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on April 17, 2007 at 10:30 A.M., with all briefs to be submitted by August 17, 2007, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Daniel Smirlock, Esq. (Michelle M. Helm, Esq., of counsel).

***ISSUE***

Whether the Division of Taxation's assertion of a deficiency based upon a comparison of the income reported on petitioner's federal and New York State returns was proper and whether petitioner has shown wherein such audit was in error.

***FINDINGS OF FACT***

1. Petitioner, Simone Y. Small, filed a U.S. Individual Income Tax Return (Form 1040) for the year 2002 wherein she reported, among other things, wage income of \$29,587.00 and net rental income of \$15,981.00 on a Schedule E.

2. Petitioner filed a New York State Resident Income Tax Return (Form IT-200) with attachments for 2002. The rental income which was reported on the federal return was not included on the New York State return in determining taxable income.<sup>1</sup> Petitioner's New York return included a number of attachments. Among other things, the attachments included an affidavit by a William C. Small stating that he is the owner of 263 Halsey Street, Brooklyn, New York, and that he gave his daughter, Simone Small, the authority to manage the properties effective January 1, 2002. In his affidavit, Mr. Small states that petitioner can claim the rent as income for tax purposes. Petitioner also included a U.S. Individual Income Tax Return for 2002 which set forth petitioner's name, address, social security number and exemption and dependent information, but did not include items of income or adjusted gross income. Petitioner also attached a Schedule E (Supplemental Income and Loss) for 2002 which stated that rents were received in the amount of \$28,560.00 less expenses of \$12,578.20 for a net income of \$15,981.80.

3. The Division of Taxation (Division) issued a Statement of Proposed Audit Changes, dated August 25, 2005, which explained that it increased petitioner's New York income by \$15,981.00 to correspond with the amount reported on the federal return. The statement then

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<sup>1</sup> Perhaps the discrepancy arose because the IT-200 does not have a line for reporting rental income as a component of federal adjusted gross income.

computed the New York State and New York City personal income tax on the additional New York income.

4. The Division issued a Notice of Deficiency, dated November 14, 2005, which asserted that tax was due in the amount of \$1,590.00, plus interest in the amount of \$280.52, for a balance due of \$1,870.52. The tax asserted to be due was premised upon the explanation set forth in the Statement of Audit Changes.

#### ***SUMMARY OF PETITIONER'S POSITION***

5. Petitioner believes that the Division's assertion that tax is due is part of an organized effort to "destroy her life." It is petitioner's feeling, among other things, that documentation has been stolen from her home, that there is illegal surveillance of her home, that she has been followed and that her phones are being tapped. In a post hearing submission, petitioner asks for, among other things, an investigation of the Division's representative because a tax return for the year 2001 was not provided and because purported attachments to her 2002 personal income tax return were not submitted into the record. In addition, petitioner objected to the way in which the hearing was conducted and to alleged intentional inaccuracies in the transcript. Petitioner also presented documents regarding difficulties with certain previous employers and her attempts to seek redress for alleged wrongs. Petitioner's documentation also included copies of letters sent to officials seeking a redress of her grievances.

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

A. The New York adjusted gross income of a resident individual is defined in Tax Law § 612(a) as that person's federal adjusted gross income with certain modifications. Federal adjusted gross income is therefore the starting point in the calculation of New York adjusted gross income, and is defined in Internal Revenue Code § 62(a) generally as gross income less

certain deductions. Here, it is not disputed that petitioner filed a federal income tax return for 2002 wherein she reported that she had rental income from real estate in the amount of \$28,560.00 less expenses of \$12,578.20 for a net income of \$15,981.80. The record shows that petitioner appended a Schedule E, for reporting income or loss from rental real estate, to her New York income tax return. This Schedule E reported the same net income as that reported on the federal return. Nevertheless, the rental income shown on the Schedule E was not reported on petitioner's New York State Resident Income Tax Return and therefore not included in determining the amount of petitioner's New York taxable income. Since this amount was included in petitioner's federal adjusted gross income on her federal return, it should have been included in her New York adjusted gross income.

B. The arguments raised by petitioner do not warrant a different result. Although petitioner may believe that she reported the same amounts to New York State as she reported on her federal return, the record shows that the rental income was not reported to New York State in a prescribed manner or in a way which would have come to the Division's attention. Further, petitioner's claim that the Division did not take into account the expenses on the rental property for 2002 is incorrect. The record shows that the amount of income attributed to her by the Division was the same amount of net income as she reported to the federal government.

C. Contrary to petitioner's assertions, the attachments to petitioner's New York State Resident Income Tax Return for 2002 were included in the record (Exhibit "G") and noted in Finding of Fact "2." In addition, since the asserted deficiency of tax was based upon a comparison of the 2002 federal and New York State income tax returns, the personal income tax return for 2001 was not germane to the issue in this matter. Therefore, petitioner was not prejudiced by the Division's failure to produce it at the hearing.

D. The jurisdiction of the Division of Tax Appeals is prescribed by statute (*see*, Tax Law art 40). It does not include conducting investigations. Accordingly, petitioner's request that the Division of Tax Appeals conduct certain investigations is rejected. Similarly, petitioner's difficulties with her prior employers is also beyond the jurisdiction of the Division of Tax Appeals and has no bearing on her tax liabilities.

E. The petition of Simone Y. Small is denied and the Notice of Deficiency, dated November 14, 2005, is sustained together with such interest as may be lawfully due.

DATED: Troy, New York  
November 21, 2007

/s/ Arthur S. Bray  
ADMINISTRATIVE LAW JUDGE