

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petition | : | |
| of | : | |
| NAZZAR AND NOSHABA AHMAD | : | ORDER |
| | : | DTA NO. 821514 |
| 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 2005. | : | |

Petitioners, Nazzar and Noshaba Ahmad, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2005.

A hearing was scheduled before Administrative Law Judge Arthur S. Bray at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York 10022, on Tuesday, February 5, 2008 at 2:45 P.M. Petitioners failed to appear and a default determination was duly issued. Petitioners made a written request, which was received March 5, 2008, that the default determination be vacated. The Division of Taxation filed a response, dated April 16, 2008, in opposition to petitioners' application to vacate the default.

Petitioners appeared pro se. The Division of Taxation (Division) appeared by Daniel Smirlock, Esq. (Michele W. Milavec, Esq., of counsel).

Upon a review of the entire case file in this matter as well as the arguments presented for and against the request that the default determination be vacated, Administrative Law Judge Arthur S. Bray issues the following order.

FINDINGS OF FACT

1. The matter at issue here pertains to a Notice of Disallowance, dated May 12, 2006, issued to petitioners which disallowed New York State and New York City earned income credits totaling \$1,540.00 for the year 2005.

2. Petitioners challenged the Notice of Disallowance by filing a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS). A conciliation conference was held on November 1, 2006 and, in an order dated December 8, 2006, the request was denied and the statutory notice was sustained.

3. Petitioners filed a petition with the Division of Tax Appeals challenging the notice of disallowance. On or about May 17, 2007, the Division of Tax Appeals issued a Notice to Schedule a Hearing & Prehearing Conference to the parties requesting that they select a hearing date. In a letter dated June 7, 2007, the Division of Tax Appeals was advised that the Division and petitioner's representative had agreed to a hearing date of October 31, 2007. On September 24, 2007, the Division of Tax Appeals issued a Notice of Hearing scheduling the hearing to be held on October 31, 2007, at 10:30 A.M., at the offices of the Division of Tax Appeals in New York City.

4. On October 29, 2007, petitioners' representative elected to proceed with a small claims hearing. On December 31, 2007, the Division of Tax Appeals issued a Final Notice of Small Claims Hearing which scheduled a hearing to be held on February 5, 2008 at 2:45 P.M. The Notice of Hearing was mailed to petitioners at 88-10 197th Street, Apt. 2E, Hollis, NY 11423 and

to petitioners' representative at A.C.K. Associates, 187-06 Hillside Avenue, Jamaica, NY, the addresses listed on the petition.

5. Neither petitioners nor their representative appeared at the date and time of the scheduled small claims hearing. The hearing was called, and the Division's representative moved for a default determination.

6. A default determination was issued on February 28, 2008. The order was mailed to petitioners and their representative at the same addresses to which the notices of hearing were sent.

7. On March 5, 2008, the Division of Tax Appeals received a letter requesting that the default determination be vacated. In their letter, petitioners stated that in January 2008 they moved to a new address at 88-12 197 Street, Apartment 3D, Hollis, New York 11423. Petitioners also explained that, one day, one of the petitioners was returning home and saw their mailman who said that he had received a letter with the previous address. He then gave the letter to one of the petitioners. Petitioners also assert that their representative never received the notice of hearing. Petitioners' request to vacate the default did not address the merits of their case.

8. In response to the motion, the Division noted that petitioners received the Default Determination even though it was mailed to their old address. It is also submitted that there is no explanation of why petitioners' representative did not receive the notice of hearing as there is no allegation that he moved. The Division points out that petitioners' representative obviously received mail at the address used by the Division of Tax Appeals since the representative returned the Small Claims Election form to the Division of Tax Appeals after receiving it. Lastly, the Division points out that petitioners did not present any evidence regarding whether they have a meritorious case.

CONCLUSIONS OF LAW

A. The record in this matter is clear that neither petitioner nor petitioners' representative appeared at the scheduled hearing or obtained an adjournment. Therefore, it was appropriate to grant the Division's motion for a default pursuant to 20 NYCRR 3000.15(b)(2) (*see Matter of Poindexter*, Tax Appeals Tribunal, September 7, 2006; *Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995). Once the default order was issued, it was incumbent upon petitioners to show a valid excuse for not attending the hearing and to show that they had a meritorious case (20 NYCRR 3000.15[b][3]).

B. Petitioners have not established that there was reasonable cause for their failure to appear at the hearing. Petitioners' claim that neither they nor their representative received a notice of hearing is questionable. As pointed out by the Division, petitioners apparently received subsequent mailings sent to the former address. Moreover, there is no allegation that petitioners' representative moved to a new address after the petition was filed.

C. Petitioners have not made any effort to establish that they have a meritorious case. The failure to address the merits of the case also requires a denial of the motion.

D. It is ordered that the request to vacate the default determination be, and it is hereby, denied and the Default Determination issued on February 28, 2008 is sustained.

DATED: Troy, New York
June 12, 2008

/s/ Arthur S. Bray
ADMINISTRATIVE LAW JUDGE