STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
WILLIAM D. AND LOIS B. ROTBLUT	:	DETERMINATION DTA NO. 822418
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 New York City Administrative Code for the Year 2005.	:	

Petitioners, William D. and Lois B. Rotblut, 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 New York City Administrative Code for the year 2005.

The Division of Taxation, by its representative, Daniel Smirlock, Esq. (Sarah Dasenbrock, Esq., of counsel), brought a motion dated October 21, 2008, seeking summary determination in the above-referenced matter pursuant to Tax Law § 2006(6) and 20 NYCRR 3000.9(b) on the basis that there is no material issue of fact or, in the alternative, that the facts herein mandate a determination in favor of the Division of Taxation. Petitioners, appearing pro se, filed a letter in response to the Division of Taxation's motion on November 19, 2008, which date began the 90-day period for the issuance of this determination. Based upon the motion papers, the affidavit of the Division of Taxation's representative and the documents submitted therewith, petitioners' letter in response and all pleadings and documents submitted in connection with this matter, Brian L. Friedman, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed petitioners' refund claim because petitioners failed to properly compute their income tax due, using the tax form instructions.

FINDINGS OF FACT

1. Petitioners timely filed their 2005 New York State and New York City personal income tax return (form IT-201), under the filing status married filing joint return. Attached to the motion papers of the Division of Taxation (Division) is a copy of petitioners' return which appears to be a computerized version of the tax form.

2. On their return, petitioners' computed their New York adjusted gross income (AGI) to be $613,462.00 and properly entered that amount at line 33 of their return. Petitioners computed their New York taxable income to be $565,907.00 and properly entered this amount on line 38 of the return. On the following line of the return, line 39, petitioners were directed to compute their New York State tax on the amount entered on line 38 above. It must be noted that on the return used by petitioners, line 39 states as follows: "NY State tax on line 38 amount (see **Tax Computation** in the instructions)." On line 39, petitioners entered the amount of $39,931.00.

3. Official notice is taken of the New York State Department of Taxation and Finance's IT-RP-1, Resident Income Tax Forms and Instructions for 2005. On line 39 of form IT-201 which is included within such forms and instructions, it states as follows: "New York State tax on line 38 amount (see page 97 and **Tax Computation** on pages 52 through 54)."

4. Page 97 of the instructions, pertaining to line 39 of the form IT-201, states:

> Is **line 33** (your New York AGI) $100,000 or less?
>
> If **Yes**, ...

> If **No**, see Tax Computation – New York AGI of more than $100,000, on pages 52 and 53.

5. Since petitioners' New York AGI was $613,462.00, i.e., greater than $100,000.00, they were directed to pages 52 and 53 of the instructions which pertain to New York State tax computation for taxpayers whose New York AGI was more than $100,000.00. On these pages, there are five tax computation worksheets for varying amounts of New York AGI in excess of $100,000.00, the last of which, tax computation worksheet 5 on page 53, pertains to New York AGI of more than $500,000.00. This worksheet directs the taxpayer to enter the amount from line 38 of form IT-201 (which in the case of petitioners was $565,907.00) and then multiply this amount by 7.7% (.077). Had petitioners followed these instructions, they would have computed their tax due to be $565,907.00 times .077, or $43,575.00, rather than the $39,931.00 which they computed using the New York State tax rate schedule found on page 54 of the instructions.

6. Line 47 of their return, where petitioners were directed to compute their New York City resident tax on the line 38 amount (taxable income), states: "New York City resident tax on **line 38** amount (see **Tax Computation** in the instructions)." On line 47, petitioners entered the amount of $22,368.00.

7. On the form IT-201 which is included in the New York State Department of Taxation and Finance's IT-RP-1, Resident Income Tax Forms and Instructions for 2005, line 47 of form IT-201 states as follows: "New York City resident tax on **line 38** amount (see page 98 and **Tax Computation** on pages 63 and 64)."

8. Page 98 of the instructions, pertaining to line 47 of the form IT-201, states in relevant part:

> Is **line 33** (your New York AGI) $150,000 or less?

If **Yes**, ...

If **No**, see Tax Computation - New York AGI of more than $150,000, on page 63.

9. Since petitioners' New York AGI was $613,462.00, i.e., greater than $150,000.00, they were directed to page 63 of the instructions which pertains to New York City tax computation for taxpayers whose New York AGI was greater than $150,000.00. On page 63, there are two tax computation worksheets, tax computation worksheet 6 for taxpayers whose New York AGI is more than $150,000.00 but not more than $500,000.00, and tax computation worksheet 7 for taxpayers (like petitioners) whose New York AGI is more than $500,000.00. This worksheet directs the taxpayer to enter the amount from line 38 of form IT-201 (which in the case of petitioners was $565,907.00) and then multiply this amount by 4.45% (.0445). Had petitioners followed these instructions, they would have computed their New York City resident tax to be $565,907.00 times .0445, or $25,183.00, rather than the $22,368.00 which they computed using the New York City tax rate schedule found on page 64 of the instructions.[1]

10. As a result of petitioners' failure to properly follow the instructions set forth on the 2005 form IT-201, they underreported and underpaid their New York State and New York City tax liability by the amount of $3,644.00 and $2,815.00, respectively, or a total of $6,459.00. Accordingly, on June 26, 2006, the Division issued a Notice and Demand for Payment of Tax Due to petitioners in the amount of $6,458.70, plus interest of $2.90, for a total amount due of $6,461.60 for the 2005 tax year.

[1] It must be noted that even erroneously using the tax rate schedule at page 64, petitioners computed their New York City tax to be $22,368.00 when the correct amount was, in fact, $22,539.00.

11. On June 21, 2007, petitioners paid the entire amount due, which, with the accrual of interest on the deficiencies of State and City taxes, was $7,158.98. Thereafter, petitioners timely filed a claim for refund of this additional amount paid.

12. On August 17, 2007, the Division issued a Notice of Disallowance to petitioners which stated, in relevant part, as follows:

> Your claim for refund is based on the fact that a printing error was made in the tax tables you used in computation of your tax. There is no provision in the New York State Tax Law that allows an adjustment to tax based on errors in the instructions used, even though printed in error by this Department.

SUMMARY OF THE PARTIES' POSITIONS

13. Petitioners assert that there was no printed error made but, instead, that they "properly computed their NYS and NYC Income Tax for the year 2005 in accordance with the Tax Rate Schedules contained on page 54 and page 64 of the Resident Income Tax Forms and Instructions." Petitioners contend that since they used, "in good faith," the tax tables that were printed by New York State in their "Resident Income Tax Forms and Instructions - IT-RP-1 Packet," they are entitled to the refund claimed. Petitioners maintain that they are entitled to a hearing to determine whether they used the correct form to calculate their State and City tax liability.

14. The Division states that there are no issues of fact in this matter and, accordingly, it is entitled to an order granting summary determination in its favor. The Division maintains that the tax forms, along with the accompanying instructions, provide clear and repeated reference to the pages of the instructions which set out the correct method for calculating petitioners' income tax liability. In any event, the Division asserts, petitioners are charged with knowledge of the law.

CONCLUSIONS OF LAW

A. A motion for summary determination may be granted:

> if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

B. Section 3000.9(c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (***Winegrad v. New York Univ. Med. Ctr***, 64 NY2d 851, 853, 487 NYS2d 316, 317 [1985], ***citing Zuckerman v. City of New York***, 49 NY2d 557, 562, 427 NYS2d 595, 597 [1980]). Inasmuch as summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is "arguable" (***Museums at Stony Brook v. Village of Patchogue Fire Dept.***, 146 AD2d 572, 573, 536 NYS2d 177, 179 [1989]). "To defeat a motion for summary judgment, the opponent must . . . produce 'evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim,' and 'mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient'" (***Whelan v. GTE Sylvania***, 182 AD2d 446, 582 NYS2d 170, 173 [1992] ***citing Zuckerman v. City of New York***).

C. A careful review of the New York State Department of Taxation and Finance's IT-RP-1, Resident Income Tax Forms and Instructions for 2005, makes it clear that had petitioners

followed the directives set forth on the form IT-201, they would have properly computed their State and City tax liabilities for the year.

As to their State tax computation, line 39 of form IT-201, where the amount of New York State personal income tax due was to be set forth, directs the taxpayer to page 97 of the instructions and to the tax computation on pages 52 through 54. Page 97 of the instructions alerts a taxpayer that if his New York AGI is more than $100,000.00, he is to refer to pages 52 and 53 of the instructions. As noted in Finding of Fact 5, worksheet 5 on page 53 of the instructions, which pertains to taxpayers such as petitioners whose New York AGI was greater than $500,000.00, instructs the taxpayer to multiply the amount entered on line 38 of form IT-201 by 7.7% (.077). Had petitioners followed this instruction, they would have properly computed their New York State tax liability which was $43,575.00.

For their City tax computation, line 47 of form IT-201, where the amount of New York City personal income tax due was to be set forth, directs the taxpayer to page 98 of the instructions and to the tax computation on pages 63 and 64. Page 98 of the instructions alerts a taxpayer that if his New York AGI is more than $150,000.00, he is to refer to page 63 for his tax computation. As noted in Finding of Fact 9, worksheet 7 on page 63 of the instructions, which pertains to taxpayers such as petitioners whose New York AGI was greater than $500,000.00, instructs the taxpayer to multiply the amount entered on line 38 of form IT-201 by 4.45% (.0445). Had petitioners followed this instruction, they would have properly computed their New York City tax liability which was $25,183.00.

D. As noted in Findings of Fact 2 and 6, it appears that the tax form used by petitioners to file their 2005 State and City return was somewhat different from the form included in the IT-RP-1, Resident Income Tax Forms and Instructions. It is not clear why petitioners' form differed

from the form in IT-RP-1; perhaps petitioners' form was downloaded from another source. In any event, the form used by petitioners at lines 39 and 47 thereof, directed them to "see **Tax Computation** in the instructions." While not as specific as the directives set forth on the official form included in IT-RP-1, the instructions at pages 52 and 53 for computing State tax liability and at page 63 for computing City tax liability provide clear directions for computing such taxes when New York AGI is more than $500,000.00. Petitioners did not follow these instructions in computing their State and City tax liabilities.

As such, as the Division asserts, there are no material issues of fact remaining in this matter which would necessitate a hearing. Accordingly, it is concluded that since there is no triable issue of fact presented, based upon the record as presently constituted, the Division is, as a matter of law, entitled to a determination in its favor.

E. The Division of Taxation's motion for summary determination is granted and the petition of William D. And Lois B. Rotblut is denied.

DATED: Troy, New York
February 12, 2009

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE