

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
CHARLES L. KYTE : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 822518
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 2004. :
:

Petitioner, Charles L. Kyte, 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 2004.

On July 9, 2009 and July 30, 2009, respectively, petitioner, appearing pro se, and the Division of Taxation, appearing by Daniel Smirlock, Esq. (Margaret T. Neri, Esq., of counsel), waived a hearing and agreed to submit this matter for determination based upon documents and briefs to be submitted by January 7, 2010, which date began the six-month period for issuance of this determination. After review of the documents and arguments submitted, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed the pension and annuity exclusion claimed by petitioner on his New York State resident income tax return for the year 2004.

FINDINGS OF FACT

1. Petitioner, Charles L. Kyte, timely filed his New York State and City resident personal income tax return for the 2004 tax year. On that return, petitioner reported federal adjusted gross income in the amount of \$36,235.00, added college choice tuition savings distributions (line 21 on Form IT-201) in the amount of \$948.00 and then subtracted a total of \$9,444.00, consisting of pensions of New York State and local governments and the federal government (line 25 on Form IT-201) of \$9,076.00¹ and college choice tuition savings deductions of \$368.00. Consequently, he determined his New York adjusted gross income to be \$27,739.00. After claiming a New York State itemized deduction in the amount of \$16,312.00, consisting of, among other items, a college tuition itemized deduction of \$10,000.00, he reported taxable income of \$11,427.00. He then calculated total New York State and City tax due for 2004 of \$809.00, consisting of New York State tax due in the amount of \$477.00 and New York City resident tax due in the amount of \$332.00. Against tax computed due of \$809.00, petitioner showed credits and payments totaling \$858.00, consisting of a City of New York school tax credit of \$63.00, New York State tax withheld of \$489.00 and New York City resident tax withheld of \$306.00. Finally, he claimed a refund of \$49.00.

2. The Division of Taxation (Division) processed petitioner's 2004 tax return, and corrected the withholding tax amount claimed on the return to correspond with the amounts listed on petitioner's wage and tax statements. As a result of that correction, petitioner's refund was increased from \$49.00 to \$284.00. The Division issued a Statement of Income Tax Adjustment, dated September 30, 2005, applying total credits and payments in the amount of

¹ Petitioner's pension distribution was from a 403(b) pension plan, not a state, local or U.S. government pension as reported on his New York State income tax return.

\$1,093.00 against total New York State and City tax due in the amount of \$809.00 and issued an adjusted refund in the amount of \$284.00.

3. Subsequently, the Division conducted a desk audit of petitioner's 2004 resident income tax return. Based upon a review of records in its files and information available to it, the Division determined that petitioner was not entitled to the claimed pension exclusion because he had not attained the age of 59½ during the 2004 tax year.

4. On August 24, 2007, the Division issued a Statement of Proposed Audit Changes to petitioner asserting additional New York State and New York City personal income tax due in the amount of \$847.00, plus interest, for a total amount due of \$1,029.98 for the year 2004. The statement explained that New York State allows a pension and annuity exclusion of up to \$20,000.00 for pension and annuity income received after an individual reaches the age of 59½ and included as part of the income reported on a taxpayer's return. The statement further explained that information available to the Division indicated that petitioner was not 59½ during the 2004 tax year and, therefore, was not entitled to the pension and annuity exclusion claimed. However, any state, local or U. S. government pension was allowed based upon records available in the Division's files.

The Statement of Proposed Audit Changes reflected the auditor's determinations and contained a corrected tax computation as follows. Petitioner's New York taxable income per his tax return in the amount of \$11,427.00 was increased by \$9,076.00, the amount of the disallowed pension and annuity income exclusion, and the corrected New York taxable income was determined to be \$20,503.00. The New York State recomputed tax liability was determined to be \$1,077.00, less tax previously stated or adjusted of \$477.00, for additional New York State tax due in the amount of \$530.00. The New York City recomputed tax liability was determined to be

\$649.00, less tax previously stated or adjusted of \$332.00, for additional New York City tax due in the amount of \$317.00.

5. On October 18, 2007, the Division issued to petitioner Notice of Deficiency L-029090305-7 indicating additional tax due for the year 2004 of \$847.00, plus interest. Following a conciliation conference held on July 8, 2008, the Bureau of Conciliation and Mediation Services issued a Conciliation Order (CMS No. 221419) dated August 29, 2008, sustaining the statutory notice.

6. Petitioner did not submit any documentation regarding the pension and annuity income distribution that he received in 2004. Nor did petitioner submit any documentation showing that he attained the age of 59½ during the 2004 tax year.

7. Petitioner did not report any federal adjustments to income on line 17 of his 2004 resident income tax return. No documentation was submitted regarding interest petitioner allegedly paid on a qualified education loan for the year 2004.

SUMMARY OF PETITIONER'S POSITION

8. Petitioner asserts that the Division conducted an audit of his 2004 personal income tax return in 2005 and reduced his refund to account for discrepancies similar to those under review now. Petitioner also argues that he properly reported the New York State tax subtraction of the pension income distribution based upon tax documentation provided by Prudential Financial. Specifically, he alleges that Prudential Financial reported the distribution as a "403b/Federal/State pension disbursement" on the tax form provided to both the Internal Revenue Service and to him in 2004. Petitioner further argues that this tax reassessment constitutes double taxation because his 2004 tax and fiscal records indicate that federal and state taxes were previously withheld from his distribution, which was used for his undergraduate and

graduate expenses. Additionally, petitioner claims his original tax calculations were correct because an early withdrawal penalty was assessed and a deduction for interest paid on qualified education loans up to \$2,500.00 per year may be allowed.

CONCLUSIONS OF LAW

A. As noted above, the Division processed petitioner's 2004 tax return and corrected the withholding tax amount claimed on the return to correspond with the amounts listed on petitioner's wage and tax statements. As a result of that correction, the Division issued an adjusted refund in the amount of \$284.00. Contrary to petitioner's assertion, the Division's initial processing of his 2004 income tax return resulted in a refund greater than the amount claimed on the return as filed.

B. Tax Law § 612(a)² provides that the adjusted gross income of a resident individual is his federal adjusted gross income with certain modifications provided for in subsections (b) and (c) of Tax Law § 612. Tax Law § 612(c) provides, in relevant part, that there shall be subtracted from federal adjusted gross income:

(3)(i) Pensions to officers and employees of this state, its subdivisions and agencies, to the extent includible in gross income for federal income tax purposes;

(ii) Pensions to officers and employees of the United States of America, any territory or possession or political subdivision of such territory or possession, the District of Columbia, or any agency or instrumentality of one of the foregoing, to the extent includible in gross income for federal income tax purposes;

(3-a) Pensions and annuities received by an individual who has attained the age of fifty-nine and one-half, not otherwise excluded pursuant to paragraph three of this subsection, to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars

² As the provisions of the New York City Administrative Code are virtually identical to the provisions of the Tax Law, references to the Tax Law herein, unless specifically noted, are also references to the applicable sections of the New York City Administrative Code.

C. Although in his petition, petitioner challenged the Division's disallowance of the pension exclusion, he failed to submit any documentation concerning his age in 2004. Since he failed to prove that he had attained the age of 59½ in 2004, he is not allowed to subtract the pension distribution from federal adjusted gross income in computing New York adjusted gross income (Tax Law § 612[c][3-a]; Tax Law § 689[e]). Petitioner's argument that this tax reassessment constitutes double taxation because his 2004 tax and fiscal records indicate that federal and state taxes were previously withheld from his distribution is without merit. Petitioner did not submit any documentation regarding the 403(b) pension distribution that he received from Prudential Financial. As such, it is impossible to determine if any federal or New York State income taxes were withheld from that distribution.

D. Petitioner also claimed that his original tax calculations were correct because an early withdrawal penalty was assessed and a deduction for interest paid on qualified education loans up to \$2,500.00 per year may be allowed. As noted in Finding of Fact 7, petitioner did not report any federal adjustments to income on his 2004 New York State income tax return as filed.

E. The starting point for determining New York personal income tax liability is a taxpayer's federal adjusted gross income (Tax Law § 612[a]; 20 NYCRR 112.1). Section 62(a) of the Internal Revenue Code (IRC) defines adjusted gross income as an individual's gross income minus certain deductions. Among the deductions permitted is a deduction for interest on education loans (IRC § 221). The taxpayer has the double burden of (1) demonstrating entitlement to the deduction and (2) substantiating the amount of the deduction (*see* Tax Law § 658[a]; 20 NYCRR 158.1; *Matter of Macaluso*, Tax Appeals Tribunal, September 22, 1997 *confirmed* 259 AD2d 795, 686 NYS2d 193 [1999]).

F. Although IRC § 221(a) allows “a deduction for the taxable year in an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan,” petitioner did not submit any documentation regarding a qualified education loan or any interest allegedly paid on such loan in 2004. Accordingly, he is not entitled to a deduction under IRC § 221 (Tax Law § 689[e]).

G. With respect to the early withdrawal penalty that petitioner claims was assessed, petitioner did not submit any documentation regarding his 403(b) pension distribution received from Prudential Financial in 2004. If petitioner’s pension distribution was subject to the 10% additional tax on an early distribution from a qualified retirement plan under IRC § 72(t) (early withdrawal penalty), the federal tax due for the year 2004 was increased by such early withdrawal penalty. The amount of any early withdrawal penalty that may have been assessed would not be deductible from petitioner’s gross income under IRC § 275(a)(1).

H. The petition of Charles L. Kyte is denied, and the Notice of Deficiency L-029090305-7 dated October 18, 2007 is sustained.

DATED: Troy, New York
May 13, 2010

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE