STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
DAVID AND TARCIA RANDLE	:	DECISION DTA NO. 827696
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2012.	:	

Petitioners, David and Tarcia Randle, filed an exception to the determination of the Administrative Law Judge issued on February 22, 2018. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel).

Petitioners filed a letter brief in support. The Division of Taxation filed a letter brief in opposition. Petitioners filed a letter brief in reply. Oral argument was not requested. The six-month period for issuance of this decision began on May 30, 2018, the date that petitioners' letter brief in reply was received.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether the Division of Taxation has established that summary determination is warranted upon the basis that there are no material and triable issues of fact presented in this matter, such that, as a matter of law, a determination can be made in its favor.

II. Whether a frivolous petition penalty should be imposed under the authority of Tax Law § 2018.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for findings of fact 3, 7 and 8, which we have modified for clarity and to more accurately reflect the record. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

1. On or about March 4, 2013, petitioners, David and Tarcia Randle, filed a joint New York Resident Income Tax Return (form IT-201), for the tax year 2012. On said return, petitioners reported $2,724.00 in wage income, $100.00 in taxable interest income, $13,995.00 in taxable social security benefits, and $38,606.00 in income from a discharge of student loan indebtedness.

2. On or about April 28, 2014, petitioners filed a joint amended resident income tax return (form IT-201-X) for the tax year 2012 and claimed a New York subtraction of $11,100.00 on line 30 of the amended return for contributions to New York's 529 college savings program (529 Program), and requested a tax refund of $560.00.

3. Subsequent to the filing of the amended return, the Division of Taxation (Division) selected petitioners' 2012 income tax filing for review. The auditor assigned submitted an audit program request with the 529 Program for tax year 2012. This audit program compares all contributions made to the 529 Program for the given tax year to all taxpayers' claims of contributions to the 529 Program on their tax filings for the given tax year. The result of the completed audit program indicates that neither petitioner made contributions to the 529 Program in tax year 2012 or held a 529 Program account. The Division issued a statement of proposed audit changes with its findings to petitioners on November 18, 2015.

4. On January 13, 2016, the Division issued a notice of deficiency to petitioners for the year 2012, asserting $480.00 in additional tax due, plus interest, based upon the disallowance of the 529 Program contribution claimed on the amended return.

5. Following a conciliation conference in the Division's Bureau of Conciliation and Mediation Services, a conciliation order was issued on June 3, 2016 sustaining the notice of deficiency.

6. On June 15, 2016, petitioners filed a petition with the Division of Tax Appeals, which alleged as follows:

> "There is no law requiring me to pay taxes. Therefore I do not have a debt. Please grant ($1,500) for the years of inconvenience."

7. On October 25, 2017, following the filing of the Division's answer to the petition, the Division filed a motion for summary determination in its favor. In support of the motion, the Division asserted that petitioners' arguments are without merit, noting that the Internal Revenue Code and the Tax Law impose tax on the taxable income of New York residents. The Division asserted that the notice of deficiency was proper because petitioners did not make contributions to a 529 Program, and petitioners' argument that they do not owe tax is frivolous and justifies imposition of a penalty pursuant to Tax Law § 2018.

8. In response to the Division's motion, petitioners alleged that the there is no law imposing an income tax on them and claimed that the notice of deficiency is an illegal debt. Petitioners also attached copies of HJR 192 and a copy of the 13th Amendment to the United States Constitution. Petitioners did not attempt to explain how either of these documents are relevant to this proceeding or how these authorities affect their tax liability. Petitioners did not

challenge the disallowance of the claimed 529 Program contribution with any material evidence demonstrating that such a contribution was actually made.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began his determination by reviewing the standards for the granting of a motion for summary determination. He noted that a proponent of a motion for summary determination must provide sufficient evidence to establish entitlement to judgment as a matter of law and that such a motion should be denied if material facts are in dispute or arguable. According to the Administrative Law Judge, the opponent of a motion for summary determination must come forward with evidentiary proof in admissible form to require a trial of questions of material fact. The Administrative Law Judge determined that the Division had presented sufficient evidence to establish that there were no triable issues of fact and that petitioners had failed to submit any credible evidence to dispute the facts as set forth in the Division's motion papers and thus raised no material issue of fact requiring a hearing.

Next, in determining whether summary determination should be granted to the Division as a matter of law, the Administrative Law Judge reviewed the Tax Law definitions of taxable income and adjusted gross income and the Tax Law requirement to pay tax on income. He determined that petitioners' income is, indeed, subject to taxation and that petitioners were liable for the income tax asserted as due in the January 13, 2016 notice of deficiency. Having found petitioners' contention that there is no law requiring them to pay income taxes incorrect, he granted the Division's motion for summary determination.

Finally, the Administrative Law Judge reviewed the Tax Law provisions relating to the imposition of a frivolous penalty. He found petitioners' argument that the Tax Law does not

require them to pay income tax patently frivolous and accordingly that the facts and circumstances of this matter justify the imposition of a frivolous petition penalty in the amount of $500.00.

ARGUMENTS ON EXCEPTION

On exception, petitioners continue to assert that the imposition of income taxes is unlawful and that they are not liable for the deficiency asserted as due and owing. Among other assertions, they contend that the 16th Amendment to the United States Constitution was never properly ratified and is illegal and they question the legal authority of the IRS and the Division. They disagree with the entire Administrative Law Judge determination and seek reimbursement for their fees.

The Division contends that the Administrative Law Judge correctly determined that petitioners had failed to come forward with any proof in admissible form to require a hearing in this matter. They assert that the Administrative Law Judge properly sustained the notice of deficiency and granted summary determination. Finally, the Division argues that the imposition of a frivolous petition penalty in the amount of $500.00 was justified and proper**.**

OPINION

We affirm the determination of the Administrative Law Judge.

The law is clear that a motion for summary determination "shall 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" (20 NYCRR 3000.9 [b] [1]). Such a motion is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212 (20 NYCRR 3000.9 [c]). "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 [1985], ***citing Zuckerman v City of New York***, 49 NY2d 557, 562 [1980]). 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 (***Glick & Dolleck v Tri-Pac Export Corp.***, 22 NY2d 439 [1968]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (***Gerard v Inglese***, 11 AD2d 381 [2d Dept 1960]). "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 . . . '" (***Whelan v GTE Sylvania***, 182 AD2d 446, 449 [1st Dept 1992], ***quoting Zuckerman v City of New York***, 49 NY2d at 562).

Here, the evidence submitted by the Division shows that petitioners claimed, as a New York subtraction, an $11,100.00 contribution to the 529 Program. The Division's audit revealed that: (i) neither petitioner made any contributions to the 529 Program in 2012; and (ii) neither petitioner held an account with the 529 Program. The Division, thereafter, disallowed the claimed subtraction, which resulted in the deficiency at issue. The Division has, thus, made a prima facie showing of entitlement to summary determination.

Where, as here, a notice of deficiency has a rational basis and has been properly issued, a presumption of correctness attaches to it and petitioner bears the burden of proving that the proposed deficiency is erroneous (***see Matter of Thomas***, Tax Appeals Tribunal, April 19, 2001; ***Matter of Gilmartin v Tax Appeals Trib***., 31 AD3d 1008 [3d Dept 2006]; ***Matter of Leogrande***

v Tax Appeals Trib., 187 AD2d 768 [3d Dept 1992]; Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]). In response to the Division's motion, it was incumbent upon petitioners to establish that they had, in fact, made a contribution to a qualified 529 Program thereby warranting the reduction in the amount of taxable income for the 2012 tax year. Petitioners, however, made no attempt to demonstrate such a contribution and introduced no evidence that could support a claim of either the unreasonableness of the assessment or the incorrectness of the tax assessed. Instead, they argued that the deficiency determination is an illegal debt that does not apply to them.[1] On exception, they also argue that no law requires them to pay taxes; that there is no lawful income tax; that the Federal Reserve is a private company; that the 16th Amendment to the United States Constitution was never properly ratified and is illegal; and that the IRS and the Division are private corporations and are operating under color of law.

Tax Law § 601 imposes an income tax on the New York taxable income of its residents.

Tax Law § 611 (a) defines New York taxable income as follows:

> "The New York taxable income of a resident individual shall be his New York adjusted gross income less his New York deduction and New York exemptions, as determined under this part."

Tax Law § 612 (a) defines New York adjusted gross income as follows:

> "The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

In turn, Internal Revenue Code (IRC) (26 USC) § 62 (a) defines federal adjusted gross income in the case of an individual, as "gross income minus the following deductions: . . . ."

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[1] Petitioners submitted a copy of HJR 192 and a copy of the 13th Amendment to the United States Constitution. HJR 192 is the House Joint Resolution that took the United States off the gold standard in 1933 and the 13th Amendment abolished slavery. Petitioners have offered no explanation as to how these documents relate to the present proceeding nor is their relevance readily apparent.

Gross income includes compensation for services, interest income, income from discharge of indebtedness, and taxable social security income (IRC [26 USC] §§ 61, 86). Thus, contrary to petitioners' arguments, there are laws making them liable for income tax and petitioners are liable for the tax as asserted in the January 13, 2016 notice of deficiency. Petitioners' other contentions are typical "tax protester" claims that have been rejected by the courts on many occasions (***see e.g.***, ***Ficalora v Commr.***, 751 F2d 85 [2nd Cir 1984]; ***Crain v Commr.***, 737 F2d 1417 [5th Cir 1984]; ***Schiff v Commr.***, TC Memo 1992-183; ***Woods v Commr.***, 91 TC 88 [1988]). We similarly reject such claims. Therefore, as petitioners have failed to submit any proof to demonstrate that the notice of deficiency was erroneous, we agree with the Administrative Law Judge's conclusion that summary determination is properly granted in this matter.

Finally, Tax Law § 2018 provides that:

> "If any petitioner commences or maintains a proceeding in the division of tax appeals primarily for delay, or if the petitioner's position in such proceeding is frivolous, then the tax appeals tribunal may impose a penalty against such petitioner of not more than five hundred dollars" (***see also*** 20 NYCRR 3000.21).

Arguments like those made by petitioners (i.e., that the income tax is illegal and that the Tax Law does not apply to them) have repeatedly been deemed meritless and frivolous and have been soundly rejected by the courts (***see Ficalora v Commr.***; ***Crain v Commr.***; ***Schiff v Commr.***; ***Woods v Commr.***). In ***Schiff***, the court labeled similar arguments "specious" and "a waste of judicial resources." The frivolous petition penalty is appropriate where an assertion has been soundly rejected by the courts and absolutely no basis for the assertion can be found (***Matter of***

Thomas, Tax Appeals Tribunal, April 19, 2001). Petitioners' arguments are of this sort and we therefore affirm the imposition of the $500.00 penalty against them.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of David and Tarcia Randle is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of David and Tarcia Randle is denied;

4. The notice of deficiency dated January 13, 2016 is sustained; and

5. The penalty of $500.00 imposed against petitioners for filing a frivolous petition is sustained.

DATED: Albany, New York
November 29, 2018

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner