

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
EUNPA CHAE	:	DECISION DTA NO. 829928
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 2015.	:	

Petitioner, Eunpa Chae, filed an exception to the order of the Supervising Administrative Law Judge issued on September 7, 2023. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Maria Matos, Esq., of counsel).

Petitioner filed a brief in support of the exception. The Division of Taxation filed a brief in opposition. Petitioner filed a letter brief in reply. Oral argument was not requested. The six-month period for issuance of this decision began on December 4, 2023, the date that petitioner's reply brief was received.

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

ISSUE

Whether the default determination issued in this matter should be vacated.

FINDINGS OF FACT

We find the facts as determined by the Supervising Administrative Law Judge. These facts are set forth below.

1. On April 22, 2020, petitioner, Eunpa Chae, filed a petition with the Division of Tax

Appeals protesting a notice of deficiency, assessment number L-049325851, issued to her dated May 8, 2019 (notice). The notice asserted additional New York State personal income tax for the year 2015 in the amount of \$228.00, plus interest.

2. Petitioner listed her address as “70 Harriman Rd, Irvington, NY 10533” on the petition.

3. On or about December 1, 2022, Presiding Officer Juan Cartagena sent a letter to petitioner and to the Division of Taxation (Division) informing them that he was assigned to the matter. In this letter, he also stated that the hearing would be scheduled for Thursday, February 2, 2023, at 11:00 a.m. in New York, New York. Additionally, Presiding Officer Cartagena provided the parties an opportunity to proceed with a virtual hearing using CISCO Webex. Presiding Officer Cartagena requested that petitioner contact the Hearing Support Unit if she wished to proceed with a virtual hearing rather than an in-person hearing. Petitioner did not contact the Hearing Support Unit to request that the in-person hearing be changed to a virtual hearing.

4. On December 27, 2022, a notice of hearing was issued to petitioner at her address listed on the petition that scheduled the small claims hearing in the above-captioned matter for February 2, 2023, at 11:00 a.m. at the NYS Dept. of Public Services, 90 Church Street, 4th Floor, New York, New York, 10007-2919. A copy of the notice of hearing was simultaneously sent to the Division.

5. Petitioner did not respond to the notice of hearing.

6. On Thursday, February 2, 2023, at 11:00 a.m., Presiding Officer Cartagena commenced a small claims hearing as scheduled in the *Matter of Eunpa Chae*. The Division appeared by its representative. Petitioner did not appear at the hearing. Additionally, petitioner

did not submit a written request for an adjournment of the hearing. Consequently, the representative of the Division moved that petitioner be held in default.

7. On April 20, 2023, Presiding Officer Cartagena issued a default determination against petitioner, denying the petition in this matter.

8. Petitioner's application to vacate the default determination was filed on May 11, 2023. In her letter, petitioner argued that she is entitled to a resident tax credit for the year 2015. Attached to her letter was a copy of her 2015 New York State personal income tax return and a copy of the default determination issued to her.

9. In its opposition to the application, the Division stated that petitioner offered no excuse for her failure to appear at the hearing nor did she submit any evidence of a meritorious case.

THE ORDER OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE

The Supervising Administrative Law Judge cited the Rules of Practice and Procedure of the Tax Appeals Tribunal and noted that petitioner had offered no valid explanation for her failure to appear at the scheduled hearing or to obtain an adjournment. In addition, the Supervising Administrative Law Judge found that petitioner had not established a meritorious case, having submitted only her income tax return for tax year 2015. Accordingly, the Supervising Administrative Law Judge held that the issuance of a default determination was proper.

ARGUMENTS ON EXCEPTION

In connection with her exception, petitioner makes several new arguments asserting that she accidentally missed the hearing. Petitioner explained that she intended to go to the hearing but failed to read the mailed letter providing notice of the hearing due to her busy online course

workload during which she was away from her residence at a coworking office. Petitioner submits a purported copy of an email sent on February 7, 2023, after she missed the hearing, seeking a rescheduling in which she states, among other things, that she “forgot” the hearing. Petitioner also states for the first time that she has difficulty with the English language, which is not her native tongue as she was born in South Korea. Lastly, she contends, based on various tax return data, that she had failed to take certain deductions in multiple years that would have more than offset the penalty she was facing for tax year 2015. Additionally, she makes certain claims about the failure of the New York institutions that her taxes are meant to support.

The Division argues that it was proper for the Supervising Administrative Law Judge to find that petitioner presented neither a valid excuse for her failure to appear nor a basis to show she should prevail on the merits. Accordingly, the Division contends that the default determination was properly upheld. Moreover, the Division argues that it is improper for petitioner to submit new information after a hearing has been concluded.

OPINION

With respect to small claims hearings, the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) provide, in pertinent part:

“[i]n the event a party or the party’s representative does not appear at a scheduled hearing and an adjournment has not been granted, the presiding officer shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear” (20 NYCRR 3000.13 [d] [2]).

The Rules further provide a means of vacating a default determination if a petitioner files a written application to the Supervising Administrative Law Judge in which the petitioner “shows an excuse for the default and a meritorious case” (20 NYCRR 3000.13 [d] [3]; *see also Matter of Werner*, Tax Appeals Tribunal, January 11, 2001).

It is undisputed that petitioner did not appear at the scheduled hearing or obtain an adjournment; therefore, it was proper for the presiding officer to render a default determination pursuant to 20 NYCRR 3000.13 (d) (2) (*see Matter of Hotaki*, Tax Appeals Tribunal, December 14, 2006; *Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995). When protesting the default determination before the Supervising Administrative Law Judge, petitioner did not advance any valid excuse for her failure to attend the hearing. Petitioner's claim on exception that she was busy and failed to read the mailed notice of hearing is clearly not a valid excuse for her default (*see Matter of Estruch*, Tax Appeals Tribunal, May 20, 2010 [misfiled notice of hearing is not a valid excuse for failure to appear at a scheduled hearing]). Petitioner thus failed to meet the first requirement for vacating a default determination.

Nor did petitioner offer evidence supporting the second requirement, namely, that her case was meritorious. Indeed, she submitted tax return data without further evidence and contended that she was entitled to a resident tax credit that she had not been given (*see Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015 [petitioner must make a prima facie showing of legal merit and may not rely on conclusory statements unsupported by the facts]). In this case, the Supervising Administrative Law Judge correctly concluded that petitioner presented neither an excuse for defaulting in appearance nor a meritorious case.

Therefore, we affirm the order of the Supervising Administrative Law Judge denying petitioner's motion to vacate the default determination issued to her.

With regard to petitioner's newly-argued factual claims supporting an excuse for her failure to appear at the scheduled hearing, it has long been our practice not to accept any new evidence on exception (*see Matter of Greenan*, Tax Appeals Tribunal, November 6, 1997,

Matter of Schoonover, Tax Appeals Tribunal, August 15, 1991). Therefore, the new facts or documents argued by petitioner, to the extent that they were not submitted to the Supervising Administrative Law Judge below, were not considered by us in rendering this decision (*see Matter of Gordon*).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Eunpa Chae is denied; and
2. The order of the Supervising Administrative Law Judge denying petitioner's application to vacate the default determination is affirmed.

DATED: Albany, New York
May 30, 2024

/s/ Anthony Giardina
Anthony Giardina
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner