

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of : DETERMINATION
DAVID ECKHARDT : DTA NO. 825349
for Redetermination of a Deficiency or for Refund of :
Personal Income Tax under Article 22 of the Tax Law :
for the Year 2006. :

Petitioner, David Eckhardt, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2006.

On January 21, 2014 and January 29, 2014, respectively, petitioner, appearing pro se, and the Division of Taxation, appearing by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel), waived a hearing and submitted this matter for determination based on documents and briefs to be submitted by March 14, 2014, which date commenced the six-month period for issuance of this determination (Tax Law § 2010[3]). After due consideration of the documents and arguments submitted, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner was required to file a New York State resident income tax return for the year 2006.

FINDINGS OF FACT

1. In accordance with Internal Revenue Code § 6103(d), the Division of Taxation (Division) received information from the Internal Revenue Service (IRS) that indicated that

petitioner, David Eckhardt, filed a federal income tax return using a New York State address and had New York income sufficient to require the filing of a New York State personal income tax return for the year 2006. The Division did not have a record of petitioner's filing such a return.

2. On October 25, 2011, the Division issued a Statement of Proposed Audit Changes to petitioner, which set forth the above information and explained that in order to determine the amount of tax due, if any, the Division utilized the information provided to it by the IRS and computed the tax on the basis that petitioner was a resident of New York State. The Division calculated petitioner's New York State tax liability based upon federal adjusted gross income and wages reported of \$36,990.00. The Division allowed petitioner the standard deduction of \$7,500.00, as it was greater than any allowable itemized deductions. Petitioner was also informed that penalties were imposed for late filing (Tax Law § 685[a][1]) and negligence (Tax Law § 685[b][1]). In addition, a penalty equal to 50% of the interest due on the deficiency or portion thereof due to negligence or intentional disregard of the law was added pursuant to Tax Law § 685(b)(2). Petitioner was advised that if he filed a New York State income tax return for the year 2006, he should provide a complete copy of it to the Division, along with any wage and tax statements in his possession. Furthermore, if he made a payment with the return, he was asked to provide proof to that effect. Petitioner was also invited to provide evidence if he was a full or part-year resident of another state. None of the requested proof was submitted by petitioner.

3. Based on the Statement of Proposed Audit Changes, the Division issued to petitioner a Notice of Deficiency (assessment number L-036779860-3), dated December 16, 2011, which asserted that personal income tax was due for the year 2006 in the amount of \$614.00, plus penalties and interest.

4. In support of its case, the Division submitted the affidavit of Darrell Wright, a Tax Technician 2 in its Personal Income Tax Desk Audit Unit. According to Mr. Wright, his responsibilities include reviewing and processing New York State personal income tax returns, conducting audits and resolving protests, including communicating with taxpayers and preparing administrative records, reports and forms. The information offered in his affidavit is based on his personal knowledge of the facts in this matter and his a review of the Division's official records kept in the ordinary course of business.

5. Mr. Wright avers that the Notice of Deficiency was issued to petitioner based upon information about his filing and payment status received from the IRS pursuant to IRC § 6103(d). Mr. Wright states that petitioner was advised by letter dated August 24, 2011 that no return for 2006 had been received by the Division. He adds that a thorough search of the Division's records revealed that a New York State personal income tax return for the year 2006 was not filed under petitioner's name and social security number.

CONCLUSIONS OF LAW

A. Tax Law § 681(a) provides, in pertinent part, as follows:

If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer.

B. When the Division properly issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to such notice (*Matter of Hickey*, Tax Appeals Tribunal, August 12, 2004; *Matter of Atlantic & Hudson Ltd. Partnership*, Tax Appeals Tribunal, January 30, 1992). In proceedings for review of a properly issued notice of deficiency, the burden of proof is on the taxpayer to demonstrate that the deficiency assessment is erroneous (Tax Law § 689[e]).

C. In the instant case, petitioner failed to file a New York State personal income tax return for the year 2006. The Division, however, obtained information from the IRS that showed petitioner filed his federal return using a New York address, and received wages of \$36,990.00.

D. Petitioner has offered no evidence that would provide a basis for granting his petition. The record is devoid of proof that petitioner was not required to file a New York State personal income tax return for the year 2006. Petitioner failed to submit any affidavits, even from himself, on behalf of his case. In sum, petitioner did not introduce any evidence to demonstrate that the Notice of Deficiency was erroneous. As a result, petitioner has not overcome the presumption of correctness that accompanies a notice of deficiency that is properly issued under the Tax Law (*Matter of Leogrande v. Tax Appeals Tribunal*, 187 AD2d 768 [1992], *lv denied* 81 NY2d 704 [1993]; *Matter of Tivolacci v. State Tax Commn.*, 77 AD2d 759 [1980]).

E. The petition of David Eckhardt is denied and the Notice of Deficiency, dated December 16, 2011, is sustained.

DATED: Albany, New York
April 10, 2014

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE