

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ALAN B. MARTIN AND	:	DETERMINATION
ELLEN L. MARTIN	:	DTA NO. 825511
	:	
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax	:	
Law for the Year 2009.	:	

Petitioners, Alan B. Martin and Ellen L. Martin, 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 2009.

A hearing was held before Donna M. Gardiner, Administrative Law Judge, in New York, New York, on June 26, 2014 at 11:30 A.M. All briefs were due by October 10, 2014, which date began the six-month period for the issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michele W. Milavec, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly determined additional personal income tax due for the year 2009 based upon a discrepancy between the income reported to the Internal Revenue Service and the State of New York.

FINDINGS OF FACT

1. Petitioners, Alan B. Martin and Ellen L. Martin, filed a timely New York State personal income tax return for the year 2009, pursuant to a properly executed extension of time to file.

2. On their New York personal income tax return, petitioners entered as their federal adjusted gross income \$107,296.00 and claimed a capital loss of \$20,400.00.

3. Upon the initial review of petitioners' return, the Division of Taxation (Division), noting that capital losses are limited to \$3,000.00 a year, adjusted the amount claimed. In doing so, the Division increased petitioners' adjusted gross income by \$17,400.00, resulting in an adjusted gross income of \$124,696.00. After correcting this reporting error, the Division issued to petitioners a notice and demand, dated March 30, 2012, which notified them of the increase in the adjusted gross income and the resulting tax liability of \$1,607.47 plus penalty and interest.

4. Subsequently, pursuant to an exchange of information agreement with the Internal Revenue Service (IRS), the Division was provided with the income reported by petitioners on their 2009 federal income tax return. The amount reported by petitioners was \$132,995.00, which was \$8,299.00 more than the modified New York adjusted gross income determined after adjustment for the excess capital losses.

5. The Division issued to petitioners a Notice of Deficiency, dated January 30, 2013, which set forth additional personal income tax due of \$700.29 plus interest, based on the additional income of \$8,299.00 that they reported to the IRS but not to the State of New York.

CONCLUSIONS OF LAW

A. A properly issued notice of deficiency is presumed to be correct and the taxpayer has the burden of demonstrating the incorrectness of such an assessment (*Matter of Leogrande v. Tax*

Appeals Trib., 187 AD2d 768 [1992], *lv denied* 81 NY2d 704 [1993]; *Matter of O'Reilly*, Tax Appeals Tribunal, May 17, 2004).

B. With respect to the asserted deficiency at issue, pursuant to Tax Law § 681(a), where the Division examines a return and determines that there is a deficiency of income tax, it may issue a notice of deficiency to the taxpayer. Such a determination requires only a rational basis (*see e.g. Matter of Estate of Gucci*, Tax Appeals Tribunal, July 10, 1997 citing *Matter of Atlantic & Hudson*, Tax Appeals Tribunal, January 30, 1992). The taxpayer bears the burden of proving that the deficiency is erroneous (*see Matter of Gilmartin v. Tax Appeals Trib.*, 31 AD3d 1008 [2006]; Tax Law § 689[e]).

Here, the Division established through its exchange of information agreement with the IRS that petitioners had not reported to New York State the same income they reported to the IRS. Since the starting point for determining New York personal income tax liability is federal adjusted gross income, it was incumbent upon petitioners to report their federal adjusted gross income on their New York personal income tax return (Tax Law § 612[a]; 20 NYCRR 112.1). Having failed to do so, the Division was correct in adding back the omitted income to New York adjusted gross income and asserting the additional tax due.

Petitioners offered no evidence and made no argument to refute the Division's adjustment to their New York adjusted gross income, thus failing to meet their burden of proof. The audit adjustment is therefore sustained.

C. The petition of Alan B. Martin and Ellen L. Martin is denied and the Notice of Deficiency, dated January 30, 2013, is sustained.

DATED: Albany, New York
March 5, 2015

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE