

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DANIEL D. PANG AND MINSUN LEE	:	DETERMINATION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 850043
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 2019.	:	

Petitioners, Daniel D. Pang and Minsun Lee, 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 2019.

A formal hearing by videoconference was held before Alejandro Taylor, Administrative Law Judge, on February 6, 2024, with all briefs to be submitted by May 22, 2024, which date commenced the six-month period for the issuance of this determination. Petitioners appeared by Polaris Tax (Justin King, EA). The Division of Taxation appeared by Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel). This matter was reassigned to Kevin R. Law, Administrative Law Judge, pursuant to the authority of the Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.15 [f]).

After reviewing the evidence and arguments, Kevin R. Law, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioners have established reasonable cause for the abatement of penalties.

FINDINGS OF FACT

1. On October 15, 2020, petitioners, Daniel D. Pang and Minsun Lee, electronically filed a 2019 New York State resident income tax return, form IT-201 (2019 return), upon which they reported New York State and City tax of \$329,883.00.

2. In addition to New York State and New York City tax withheld of \$57,267.00 and \$36,201.00, respectively, petitioners reported a payment of \$235,000.00 alleged to have been made with the filing of a 2019 application for automatic six-month extension of time to file for individuals (form IT-370). The balance reported due of \$1,415.00 was paid with the filing of the return.

3. On January 8, 2021, the Division of Taxation (Division) issued a statement of proposed audit change to petitioners proposing tax of \$235,000.00, plus penalties, pursuant to Tax Law § 685 (a) (1) and (2), as well as interest. The tax was asserted because the Division did not have a record of the \$235,000.00 payment that petitioners reported on their return. Penalties were asserted because the Division had no record that petitioners had filed form IT-370. Accordingly, penalties were imposed for petitioners' failure to pay tax when due and for late-filing their return.

4. On January 21, 2021, petitioners remitted payment of \$235,000.00 to the Division.

5. On February 5, 2021, the Division issued to petitioners a notice of adjusted assessment crediting petitioners for the \$235,000.00 payment.

6. On February 24, 2021, the Division issued a notice of deficiency, notice number L-052671608, for the penalty and interest after crediting petitioners for the \$235,000.00 tax payment.

7. In preparation for the hearing, the Division caused a search of its records to be

performed. Based upon this search, the Division did not locate a copy of form IT-370 filed by petitioners.

8. Likewise, the Division also caused a search of its records for petitioner's 2019 return; this search indicated that petitioners' return was not filed until October 15, 2020.

9. At the hearing in this matter, petitioners submitted a copy of an extension request they filed with the Internal Revenue Service (IRS). In addition, petitioners submitted a copy of a bank statement detailing electronic payments made to the IRS and the New Jersey Department of Revenue when they filed extension requests with those taxing authorities. Petitioners contend that while the IRS and the New Jersey extensions were submitted successfully, due to a glitch that they believe was attributable to New York's electronic filing platform, the New York extension was not accepted, and the Division did not withdraw the \$235,000.00 payment petitioners claim they tried to make when they attempted to file the extension request. Petitioners speculated that the COVID-19 pandemic and the resulting turmoil associated therewith prevented their extension request and payment from being filed in July 2020, when they filed their federal and New Jersey extension requests. Petitioner, Daniel Pang, testified that there was no mechanical way to make the payment until the Division had issued a bill.

10. Included with petitioners' exhibits were copies of a New York State taxpayer authorization for electronic funds withdrawal for tax year 2019 form IT-370 and tax year 2020 form IT-2105 (form TR-579.1-IT), dated July 7, 2020, and form IT-370 that petitioners alleged they attempted to file authorizing the electronic payment of \$235,000.00. Of note, the form IT-370 provides a physical mailing address where it can be mailed with payment. Petitioners have not alleged that they attempted to mail form IT-370 with payment.

CONCLUSIONS OF LAW

A. When the Division issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to the notice, and the burden of proof is on the taxpayer to demonstrate, by clear and convincing evidence, that the deficiency assessment is erroneous (*see Matter of Suburban Restoration Co. v Tax Appeals Trib.*, 299 AD2d 751, 752 [3d Dept 2002]; *Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also* Tax Law § 689 [e]). The Division does not bear the burden of demonstrating the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842, 843 [3d Dept 1986]).

The Division asserted penalties against petitioners for failure to timely file and timely pay tax on or before the due date for filing their 2019 return pursuant to Tax Law § 685 (a) (1) and (2). Said penalties may be abated if it is shown that the failure to timely file and pay was due to reasonable cause and not willful neglect. Petitioners have not established that the failure to timely file and pay tax was due to reasonable cause and not due to willful neglect. In the words of the Tax Appeals Tribunal, in establishing reasonable cause, the taxpayer faces an “onerous task” (*Matter of Philip Morris, Inc.*, Tax Appeals Tribunal, April 29, 1993). Petitioners have not established that they had filed a valid extension or paid the tax when due.

B. As noted by the Division, 2020 was different than other years, due to the COVID-19 pandemic. Then-Governor Cuomo issued Executive Order 202.12, allowing the Division to extend certain filing dates in response to the COVID-19 pandemic. In accordance with this executive order, the Division extended the April 15, 2020, due date to July 15, 2020, for New York State personal income tax and corporation tax returns originally due on April 15, 2020, and for all related tax payments, including estimated tax payments, that were due on April 15, 2020

(*see* NY State Dept of Taxation & Fin Notice N-20-2 [March 2020]). Petitioners' 2019 return was not filed until October 15, 2020, without having first obtained a valid extension of time to file, and the amount they reported was not paid until January 21, 2021.

C. Petitioners' assertion that they attempted to file the extension request but, for reasons unknown, were unable to do so is rejected. Petitioners offered no evidence, other than self-serving testimony, that they attempted to comply with the Division's filing deadlines, but their attempts were thwarted. Petitioners offered no corroborating evidence to suggest that their alleged difficulties with electronically filing the extension request and making their estimated tax payment was due to a failure on the part of the Division. However, even if petitioners' assertions are true, petitioners could have simply mailed the extension request along with their payment to the address listed on the form. Without more, petitioners cannot be said to have met their burden of proof in this matter.

D. The petition of Daniel D. Pang and Minsun Lee is denied, and the notice of deficiency, dated February 24, 2021, is sustained.

DATED: Albany, New York
November 21, 2024

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE