

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
BENNY OEI :
for Redetermination of a Deficiency or for Refund of New : **ORDER**
York State and New York City Personal Income Taxes : **DTA NO. 825545**
under Article 22 of the Tax Law and the Administrative :
Code of the City of New York for the Year 2009. :
:

Petitioner, Benny Oei, 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 2009.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (John E. Matthews, Esq., of counsel), brought a motion dated September 13, 2013, seeking an order dismissing the petition pursuant to section 3000.9(a)(ii) of the Tax Appeals Tribunal's Rules of Practice and Procedure, or in the alternative, for summary determination in favor of the Division of Taxation pursuant to section 3000.9(b) of the Tax Appeals Tribunal's Rules of Practice and Procedure. Petitioner filed no response to the motion. Accordingly, the 90-day period for the issuance of this order began on October 14, 2013. After due consideration of the affidavit and documents presented by the Division of Taxation, Catherine M. Bennett, Administrative Law Judge, renders the following order.

ISSUES

I. Whether the Division of Taxation's motion to dismiss should be granted for lack of subject matter jurisdiction.

II. Whether the Division of Taxation's motion for summary determination as to the notice in issue should be granted.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued a Notice of Disallowance dated December 27, 2012, to petitioner disallowing his claim for refund in the amount of \$512.00 for tax year 2009. The notice informed petitioner that the disallowance occurred for the following reasons, in pertinent part:

The documentation provided to support the business income reported on the return was incomplete or insufficient.

To qualify for the earned income credits [sic] you must be able to document that you received earned income during the tax year. For business income you must be able to provide records that support when the income was earned and the exact amount of compensation received from each transaction.

Acceptable proof of business income includes copies of a general ledger, receipt booklet or signed and dated receipts, along with bank statements showing the entire years deposits of the amount of money you received.

If you were paid by check, or money orders you can submit copies of the FRONT and BACK, as proof of payment.

A 1099-misc/letter from your employer, by itself, is not verifiable proof of your income.

Since you are claiming business expenses you must submit copies of invoices, along with canceled checks, money orders, or credit card statements, to show the expenses were paid.

Since your response to our inquiry did not include all of the required documentation to verify the income claimed on your return, the Earned Income Credits have been disallowed.

Since you did not provide the requested documentation, on school or physician letterhead, to verify the address where each of the qualifying children reside(s), the qualifying dependants claimed have been disallowed for purposes of the Empire State Child Credit and Earned Income Credits.

Based on the information above, we have determined there is no overpayment to be refunded to you.

If you disagree and would like further review of this matter, you must file either a Request for Conciliation Conference with the Bureau of Conciliation and Mediation Services or a *Petition for a Tax Appeals Hearing with the Division of Tax Appeals within two years from the date of this notice* (emphasis supplied).

2. Petitioner filed a timely petition with the Division of Tax Appeals on March 7, 2013.

CONCLUSIONS OF LAW

A. The Division of Taxation has made a motion to dismiss, and alternatively, a motion for summary determination, in this matter. A motion to dismiss the petition may be granted, as pertinent herein, if the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition (20 NYCRR 3000.9[a][ii]). A motion for summary determination may 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 and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

B. Tax Law § 689(c)(3) provides that a petition for a refund may be filed within two years of the date of the mailing of the notice of disallowance. Here, the Division denied petitioner's claim by a notice dated December 27, 2012, and in accordance with Tax Law § 689(c)(3) petitioner had two years or until December 27, 2014, to file a petition to challenge the disallowance. Since petitioner filed a petition in this matter on March 7, 2013, it is concluded that the petition was timely and that the Division of Tax Appeals has subject matter jurisdiction to consider the merits of this case. Accordingly, the Division's motion to dismiss is denied.

C. Inasmuch as the denial of the Division's motion to dismiss resolves the question of the timeliness of the filing of the petition, it is unnecessary to address the motion for summary determination as to timeliness.

D. The Division's motion to dismiss is denied, and a hearing will be scheduled before the Division of Tax Appeals in due course.

DATED: Albany, New York
January 9, 2014

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE