

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
TAMMY ROBINSON : ORDER
for Redetermination of a Deficiency or for Refund : DTA NO. 828208
of Personal Income Tax under Article 22 of the :
Tax Law for the Year 2014. :

Petitioner, Tammy Robinson, filed a petition for revision of a determination or for refund of personal income tax under article 22 of the Tax Law for the year 2014. A hearing was scheduled before Administrative Law Judge Dennis M. Galliher in Albany, New York, on Monday, May 20, 2019 at 10:30 a.m. Petitioner failed to appear and an amended default determination was duly issued on July 24, 2019.¹ Petitioner, appearing pro se, has made a written application, dated August 9, 2019, that the default determination be vacated. The Division of Taxation, by Amanda Hiller, Esq. (Stephanie M. Lane, Esq., of counsel), submitted its written opposition on August 16, 2019. The 90-day period for rendering this order began September 9, 2019. Upon a review of the entire case file in this matter, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, issues the following order.

¹ The amended default determination was issued to correct a typographical error in the original default determination.

FINDINGS OF FACT

1. On May 23, 2017, petitioner, Tammy Robinson, filed a petition with the Division of Tax Appeals protesting account adjustment notices for personal income tax for the years 2014, 2015 and 2016.

2. On October 4, 2018, the Division of Taxation (Division) filed a motion to dismiss or for summary determination in the matter. By order of January 31, 2019, Administrative Law Judge Dennis M. Galliher granted the Division's motion with respect to the tax years 2015 and 2016. Hence, the petition was dismissed for those two years. However, the order denied the Division's motion with respect to the tax year 2014 as there existed questions of fact that required a hearing. In his order, Administrative Law Judge Galliher limited the scope of petitioner's challenge solely to the factual issue of whether she could establish her entitlement to one child or dependent exemption, as claimed on her return for 2014 and in her petition. It was also ordered that the matter would proceed to a hearing in due course.

3. On April 15, 2019, the calendar clerk of the Division of Tax Appeals sent notices of hearing to petitioner and the Division advising them that a hearing in the above matter had been scheduled for Monday, May 20, 2019, at 10:30 a.m., at the offices of the Division of Tax Appeals, Agency Building #1, 3rd Floor, Albany, New York.

4. On May 20, 2019, at 11:30 a.m., Administrative Law Judge Galliher commenced the hearing as scheduled. The Division appeared by its attorney. Petitioner did not appear at the hearing and a default was duly noted.

5. On July 24, 2019, Administrative Law Judge Galliher issued an amended default determination against petitioner, denying the petition in this matter.

6. On August 9, 2019, petitioner filed this application to vacate the default determination. In the application, petitioner did not allege an excuse for her failure to appear at the hearing.

7. As to the merits of her case, petitioner, in her application, made the unsworn statement that she claimed her daughter on her return for the year ending 2014 and that “nobody else did or could they.” She also asserted that she previously provided copies of her daughter’s medical and school records to the Division. She did not attach any documents to her application.

8. In its opposition to the instant application, the Division noted that petitioner did not provide any excuse for her failure to appear at the scheduled hearing. Instead, the Division asserts, petitioner’s application merely contains tax protestor rhetoric. Finally, the Division maintained that petitioner failed to provide any proof of a meritorious case.

CONCLUSIONS OF LAW

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal, “[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 administrative law judge 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 3000.15 [b] [2]). The rules further provide that, “[u]pon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case” (20 NYCRR 3000.15 [b] [3]).

B. Petitioner did not appear at the scheduled hearing or obtain an adjournment. Therefore, the administrative law judge correctly granted the Division of Taxation’s motion for default pursuant to 20 NYCRR 3000.15 (d) (2) (*see Matter of Emerald Intl. Holdings, Ltd.*, Tax Appeals Tribunal, October 3, 2018).

C. Once the default determination was issued, it was incumbent upon petitioner to show an acceptable excuse for not attending the hearing and to show that she had a meritorious case (20 NYCRR 3000.15 [d] [3]; *see Matter of Poindexter*, Tax Appeals Tribunal, September 7, 2006). Simply put, petitioner has not offered any excuse for her failure to appear at the hearing. Instead, as the Division points out, her application is comprised of a series of protests that do not address that issue. Accordingly, petitioner has not met the first criterion to have the default determination vacated.

D. Furthermore, petitioner has not established a meritorious case. “In order to meet the meritorious case criterion for vacatur, petitioner must make a prima facie showing of legal merit, and may not rely on conclusory statements unsupported by the facts” (*Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015). Indeed, petitioner’s application to vacate consists of conclusory statements and did not include any evidence whatsoever to support her underlying case or meet her burden on the substantive issues. As a result, petitioner’s application fails on this prong as well.

E. The application of petitioner, Tammy Robinson, to vacate the amended default determination of July 24, 2019 is denied.

DATED: Albany, New York
December 5, 2019

/s/ Herbert M. Friedman, Jr.
SUPERVISING ADMINISTRATIVE LAW JUDGE