

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SEAN WOOLRIDGE	:	ORDER
	:	DTA NO. 830796
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2020.	:	

Petitioner, Sean Woolridge, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2020.

A small claims hearing was scheduled before Presiding Officer James P. Connolly in Rochester, New York, on Tuesday, March 28, 2023, at 9:30 a.m. Petitioner failed to appear and a default determination was duly issued on August 10, 2023.

Petitioner, appearing pro se, has made a written application, filed on August 29, 2023, that the default determination be vacated pursuant to 20 NYCRR 3000.13 (d) (3). The Division of Taxation, by its representative, Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), filed a response by September 28, 2023, which date commenced the 90-day period for the issuance of this order.

Based upon a review of the entire case file in this matter, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following order.

ISSUE

Whether the default determination issued in this matter should be vacated.

FINDINGS OF FACT

1. On November 27, 2021, petitioner, Sean Woolridge, filed a petition with the Division of Tax Appeals protesting a notice of deficiency, assessment number L-053668574, issued to him dated September 1, 2021 (notice). Petitioner listed his address as “4511 Bally Gar Rd, Baldwinsville, NY 13027,” on the petition.

2. On or about January 30, 2023, Presiding Officer James P. Connolly sent a letter to the parties informing them that he was assigned to the matter. In this letter, he also stated that the hearing would be scheduled for Tuesday, March 28, 2023, at 9:30 a.m. in Rochester, New York. Additionally, Presiding Officer Connolly provided the parties an opportunity to proceed by videoconference using CISCO Webex. Presiding Officer Connolly requested that petitioner contact the Hearing Support Unit if he wished to proceed with a virtual hearing rather than an in-person hearing. Petitioner did not contact the Hearing Support Unit to request that the in-person hearing be changed to a virtual hearing.

3. On February 22, 2023, a notice of hearing was issued to petitioner at his address listed on the petition that scheduled the small claims hearing in the above-captioned matter for March 28, 2023, at 9:30 a.m., to be held at the NYS Department of Taxation & Finance, Rochester District Office, 340 East Main Street, Rochester, New York, 14604. A copy of the notice of hearing was simultaneously sent to the Division of Taxation (Division).

4. None of the mail sent to petitioner was returned to the Division of Tax Appeals as undeliverable.

5. Petitioner did not respond to the notice of hearing.

6. On Tuesday, March 28, 2023, at 9:30 a.m., Presiding Officer Connolly commenced a small claims hearing as scheduled in the ***Matter of Sean Woolridge***. The Division appeared by

its representative. Petitioner did not appear at the hearing. Additionally, petitioner did not submit a written request for an adjournment of the hearing. Consequently, the representative of the Division moved that petitioner be held in default.

7. On August 10, 2023, Presiding Officer Connolly issued a default determination against petitioner, denying the petition in this matter.

8. Petitioner's application to vacate the default determination was filed on August 29, 2023. In his letter, petitioner states that he was out of state for the months of January through May due to COVID restrictions on his ability to work in New York. Moreover, he claims that there was a problem with forwarding his mail. However, he failed to elaborate on the issue. Additionally, petitioner failed to submit any documentation that addressed the merits of his case.

9. In its opposition to the instant application, the Division states that petitioner's position is without merit. The Division argues that petitioner never provided a reasonable excuse for not appearing at the scheduled hearing. Also, the Division states that petitioner did not establish a meritorious case, especially since the petition filed was frivolous. The Division requests the imposition of a \$500.00 penalty for a frivolous petition.

CONCLUSIONS OF LAW

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules):

“[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 presiding officer 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 3000.13 [d] [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 3000.13 [d] [3]).

B. Petitioner did not appear at the scheduled hearing or obtain an adjournment.

Therefore, the presiding officer correctly rendered a default determination pursuant to 20 NYCRR 3000.13 (d) (2) (*see Matter of Hotaki*, Tax Appeals Tribunal, December 14, 2006; *Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995).

C. Once the default determination was issued, it was incumbent upon petitioner to show an acceptable excuse for not attending the hearing and that he had a meritorious case (*see* 20 NYCRR 3000.13 [d] [3]; *Matter of Estruch*, Tax Appeals Tribunal, May 20, 2010; *Matter of Zavalla*).

The record shows that the notice of hearing was issued to the parties on February 22, 2023. Petitioner alleges that he was out of state from January through May and that there was a problem with his mail being forwarded. This unsworn statement without any proof of the problem with his mail is unpersuasive. Presiding Officer Connolly sent a letter to petitioner, and the Division of Tax Appeals issued the notice of hearing to petitioner, at the address listed on the petition. Neither piece of correspondence was returned as undeliverable.

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). Petitioner’s application failed to include any evidence to

meet his burden of establishing a meritorious case. As a result, petitioner's application fails on this prong as well.

E. The Division requests that a frivolous petition penalty be imposed in the amount of \$500.00 pursuant to Tax Law § 2018. As the petition has been denied by the default determination, the petition is not properly reviewable unless petitioner prevailed on his application.

F. The application of Sean Woolridge to vacate the default determination, dated August 10, 2023, is denied.

DATED: Albany, New York
December 7, 2023

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE