

STATE OF NEW YORK
DIVISION OF TAX APPEALS

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| In the Matter of the Petition | : | |
| of | : | |
| ANTONIA CRUZ LOPEZ | : | ORDER |
| | : | DTA NO. 850323 |
| 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 2021. | : | |
| | : | |

Petitioner, Antonia Cruz Lopez, 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 2021.

A formal hearing was scheduled before Administrative Law Judge Anita K. Luckina in Albany, New York, on Friday, January 31, 2025, at 10:30 a.m. Petitioner failed to appear, and a default determination was duly issued on March 27, 2025.

Petitioner, appearing pro se, has made a written application, filed on April 17, 2025, that the default determination be vacated pursuant to 20 NYCRR 3000.15 (b) (3). The Division of Taxation, by its representative, Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), filed a response by May 19, 2025, 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 petitioner's application to vacate a default determination should be granted.

FINDINGS OF FACT

1. On October 24, 2022, petitioner, Antonia Cruz Lopez, filed a petition with the Division of Tax Appeals in protest of a notice of deficiency issued to her by the Division of Taxation (Division). The notice of deficiency, bearing assessment number L-056869652, dated October 17, 2022, asserted additional income tax for the tax year 2021. Petitioner listed her address as "227 Audubon Ave, New York, NY 10033" on the petition.

2. On or about August 16, 2024, the Hearing Support Unit sent a letter to the parties informing them that Administrative Law Judge Anita K. Luckina was assigned to the matter. In this letter, the parties were informed that a prehearing conference call was scheduled for September 25, 2024, at 11:00 a.m. Administrative Law Judge Luckina held the prehearing conference call at 11:00 a.m. The Division appeared, but petitioner did not.

3. On September 25, 2024, another prehearing conference call was scheduled for October 23, 2024, at 11:00 a.m. Administrative Law Judge Luckina held the prehearing conference call at 11:00 a.m. The Division appeared, but petitioner did not.

4. On December 20, 2024, a notice of hearing was issued to petitioner, at the address listed on the petition, that scheduled the formal hearing in the above-captioned matter for January 31, 2025, at 10:30 a.m., to be held at Agency Building 1, 2nd Floor, Empire State Plaza, Albany, New York 12223. A copy of the notice of hearing was simultaneously sent to the Division.

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

6. On Friday, January 31, 2025, at 10:30 a.m., Administrative Law Judge Luckina commenced a formal hearing as scheduled in the *Matter of Antonia Cruz Lopez*. 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 March 27, 2025, Administrative Law Judge Luckina issued a default determination against petitioner, denying the petition in this matter.

8. On April 17, 2025, petitioner filed an application to vacate the default determination. In her application, petitioner states that she was hospitalized on the day of the scheduled hearing. However, she failed to provide any medical documentation. Additionally, petitioner failed to submit any documentation that addressed the merits of her case.

9. In response to the instant application, the Division stated that, although it was sympathetic to petitioner's health issues, she failed to request an adjournment. Therefore, the Division opposes petitioner's application to vacate the default determination.

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 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 rendered a default determination pursuant to 20 NYCRR 3000.15 (b) (2) (*see Matter of Ahmed*, Tax Appeals Tribunal, August 15, 2024; *Matter of Hotaki*, Tax Appeals Tribunal, December 14, 2006).

C. Once the default determination was issued, it was incumbent upon petitioner to show an acceptable excuse for not attending the hearing and that she had a meritorious case (*see* 20 NYCRR 3000.15 [b] [3]; *Matter of Ahmed*; *Matter of Brickhill*, Tax Appeals Tribunal, November 1, 2007).

The case file shows that the notice of hearing was issued to the parties on December 20, 2024. Petitioner alleges that she was hospitalized on the scheduled day of the hearing which prevented her from attending the hearing. However, she failed to participate by telephone in either of the prehearing conference calls or to request an adjournment. Also, her unsworn statement without any proof of her hospitalization is unpersuasive.

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 her burden of establishing a meritorious case. As a result, petitioner’s application fails on this prong as well.

E. The application of Antonia Cruz Lopez to vacate the default determination, dated March 27, 2025, is denied.

DATED: Albany, New York
July 03, 2025

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE