

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
STANLEY A. SOLOMON	:	DECISION
	:	DTA NO. 814806
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 1988.	:	

Petitioner Stanley A. Solomon, 83-83 118th Street, Kew Gardens, New York 11415-2425, filed an exception to the determination of the Administrative Law Judge issued on January 29, 1998. Petitioner appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel).

Petitioner did not file a brief on exception. The Division of Taxation filed a letter in lieu of a brief in opposition. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision

ISSUE

Whether petitioner has shown by clear and convincing evidence that the Division of Taxation improperly determined that he failed to pay his New York State income taxes due for 1988 so that the deficiency asserted against him should be cancelled.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

The Division of Taxation (“Division”) issued a Notice of Deficiency dated January 31, 1994 against petitioner asserting 1988 income tax due of \$4,080.64 plus penalties and interest. According to an earlier Statement of Audit Changes dated December 20, 1993, a negligence penalty as well as penalties for late filing and late payment were applied. This statement also explained that:

An additional search of our records does not indicate any previous filing under your name and social security number. Therefore, we are accepting the copy you sent [received by the Division on March 9, 1992] as your original filing.

The Division’s records indicate that petitioner failed to file timely a resident personal income tax return for 1988 and that he did not pay his income taxes for 1988. By a letter dated February 2, 1992, nearly two years before the Division issued the Notice of Deficiency dated January 31, 1994, it notified petitioner that it did not have his 1988 return on file and requested that he provide a copy. As noted in Finding of Fact “1”, a copy of petitioner’s 1988 return was received by the Division on March 9, 1992, which was in response to the Division’s letter of February 2, 1992. At the hearing, petitioner denied that he supplied the return which was received by the Division on March 9, 1992. Petitioner’s denial was not credible. Included with the return, the Division introduced into evidence the express mail envelope in which the return was mailed which shows petitioner as the sender, an envelope provided by the Division for purposes of petitioner’s sending in the 1988 return, and, moreover, a handwritten letter dated March 3, 1992 by petitioner to the Division in which petitioner alleged that he, in fact, had paid

his 1988 taxes. Petitioner's denial was rooted in his fantastic belief that an individual he calls by the surname Auerswald has been attempting to destroy his life for the past 20-odd years, and that Auerswald sent the 1988 return received by the Division on March 9, 1992.

According to an affidavit of Raymond Stiles, a tax technician, petitioner's failure to file and pay 1988 New York State income tax was discovered upon routine review of an informational tape received from the Internal Revenue Service detailing 1988 Federal income tax returns. The Division's review, commonly referred to as a Federal/state tape match, may take several years to complete according to Mr. Stiles because (1) the Federal information is not complete until one year after the return date including any approved extensions, and (2) there are a great number of returns to review. In the matter at hand, the filing date for the 1988 income tax return at issue was April 15, 1989. According to the Division, the fact that it took just under three years to discover that petitioner had not filed and paid 1988 New York State income taxes was not unreasonable given the amount of time it takes to conduct a Federal/state tape match.

On the 1988 return submitted by petitioner in March of 1992, he reported New York adjusted gross income of \$60,534.00 and New York taxable income of \$52,924.00, calculated by subtracting a New York itemized deduction of \$6,610.00 and a New York dependent exemption of \$1,000.00 from New York adjusted gross income. During 1988, petitioner was employed as a physician by a health maintenance organization in Hempstead, Long Island. Dr. Solomon has a medical degree from the University of Berne (Switzerland). Although petitioner is a resident of New York City, residing in the Kew Gardens section of Queens, no New York City resident income tax was reported due by petitioner. It is not known why the Division has not asserted New York City income tax due for 1988 against petitioner.

Petitioner did not produce any documentary proof that he had paid the New York State tax shown due of \$3,997.00 and had timely filed his 1988 return. Petitioner offered into evidence a copy of a bank check to show payment of his 1988 Federal income tax in the amount of \$18,533.00. He testified that although he did not have a memory of paying New York State taxes for 1988 with a similar bank check, he “probably” paid the State with a similar check (tr., p. 39). Petitioner asserts that his relevant papers were stolen by Auerswald, an individual who has been trying to kill him for the past 26 years. Petitioner testified that he first met an Edgar Auerswald, who was a psychiatrist at the Gouverneur Ambulatory Clinic in New York City, in 1964. Petitioner also has suggested that Auerswald has bribed or manipulated various Division employees so that there is no record of his payment of income tax for 1988.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that the Notice of Deficiency issued by the Division against petitioner for 1988 is presumed correct unless petitioner proves by clear and convincing evidence that the Division’s assertion of tax due was in error (*citing, Matter of Bello v. Tax Appeals Tribunal*, 213 AD2d 754, 623 NYS2d 363).

Petitioner failed to introduce any documentary evidence that would establish that he timely filed and paid his 1988 New York State income taxes. Therefore, the Administrative Law Judge concluded he had not met his burden to prove by clear and convincing evidence that the Division’s assertion of tax due was in error.

ARGUMENTS ON EXCEPTION

Petitioner essentially makes the same arguments as were made below, i.e., that his tax records were stolen by Auerswald and that Auerswald altered the photocopy of petitioner's 1988 tax return sent to the Division in March 1992. Petitioner also argues that he does not bear the burden of proof to show that he filed his return and paid his tax.

OPINION

Petitioner failed to offer documentary evidence to establish that he timely filed and paid his 1988 New York State income taxes. He also failed to offer any other credible evidence that would establish such fact. That being the case, petitioner has failed to carry his burden of proof (Tax Law § 689[e]; ***Matter of Delia v. Chu***, 106 AD2d 815, 484 NYS2d 204), and we affirm the determination of the Administrative Law Judge for the reasons stated therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Stanley A. Solomon is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Stanley A. Solomon is denied; and

4. The Notice of Deficiency dated January 31, 1994 is sustained.

DATED: Troy, New York
October 1, 1998

/s/Donald C. DeWitt

Donald C. DeWitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.

Joseph W. Pinto, Jr.
Commissioner