

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>ALVIN GELLER</b>	:	DECISION
	:	DTA NO. 816178
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1992.	:	

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Petitioner Alvin Geller, 79 North Broadway, Apartment M, White Plains, New York 10603-3750, filed an exception to the determination of the Administrative Law Judge issued on December 31, 1998. Petitioner appeared *pro se*. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Michael J. Glannon, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed 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 established that the deficiency notice issued to him was incorrect.

***FINDINGS OF FACT***

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

As specifically set forth in a Statement of Proposed Audit Changes dated December 4, 1995, the Division of Taxation (“Division”) advised petitioner, Alvin Geller, as follows:

We do not have a record of a 1992 New York State income tax return on file for you. You did not reply to our previous letters asking about your New York return.

An exchange of information agreement with the Internal Revenue Service allowed us to get information from them. This information shows you filed a 1992 federal income tax return using a New York State address.

We used information from your federal return and computed your tax as a New York resident. The starting point for computing your New York tax is federal adjusted gross income. We allowed subtractions to income and any appropriate child care credit based on the federal information.

If the New York standard deduction was greater than your allowable itemized deduction it was allowed as follows:

- \$9,500 - Married filing joint or qualifying widow(er)
- 7,000 - Head of Household
- 6,000 - Single
- 4,750 - Married filing separate return
- 2,800 - Dependent filer

We will allow additional payments if your 1992 tax withheld from wages or estimated tax payments are greater than the amounts shown on this bill. Please furnish a wage and tax statement or canceled check showing a larger amount.

The Division's Statement of Proposed Audit Changes also specified that penalties were imposed pursuant to Tax Law § 685(a)(1); (b)(1) and (2), for late filing, negligence and an additional penalty for negligence or intentional disregard of the Tax Law, respectively. Petitioner was advised that if he had filed a 1992 New York State return, he should provide a complete copy of it to the Division including wage and tax statements and that, if he had made a payment with the return, he should provide the deposit serial number stamped on the face of the check. Petitioner was further advised that if he was a full-year resident of another state he should

provide documentation to establish the same, including a copy of any income tax return filed with the other state. Finally, petitioner was advised that if he was a part-year resident of another state, he should show the period of residence in New York State, New York City or Yonkers, and include a copy of any income tax return filed with the other state.

The Division's Statement of Proposed Audit Changes reflects petitioner's Federal adjusted gross income as \$63,170.00, and thereafter reduces the same by \$7,000.00 (New York Head of Household standard deduction) and \$1,000.00 (dependent exemption), to arrive at New York taxable income of \$55,170.00 and a New York tax liability of \$3,861.00. The Statement indicates that no New York tax was withheld, thus leaving the \$3,861.00 tax liability as the amount of petitioner's tax deficiency for 1992.

By a Statement of Assessment Resolution dated August 23, 1995, the Division advised petitioner that since he had not provided the required information, the deficiency described above was considered to be correct. In turn, the Division issued to petitioner, Alvin Geller, a Notice of Deficiency, dated September 23, 1996, asserting a personal income tax deficiency for the year 1992 in the amount of \$3,861.00, plus penalty and interest. This asserted deficiency was premised on the Division's finding, as detailed in its Statement of Proposed Audit Changes, that in 1992 petitioner was a New York State resident, had earned income in New York State and failed to file a personal income tax return or pay income tax on his New York State income.

Following a conciliation conference, the Division issued a Conciliation Order (CMS No. 158629), dated August 8, 1997, which sustained the Notice of Deficiency as issued.

Petitioner continued his challenge by filing a petition wherein he asserted that the Division's determination of his 1992 income was erroneous; that 1992 New York State income

taxes were withheld from his earnings for 1992 in an amount sufficient to satisfy his tax obligation for such year; that the Division incorrectly computed his 1992 State tax liability; that he owes no taxes for 1992; and that the conciliation order was erroneous. Petitioner also claimed that he was denied due process of law.

On May 19, 1998, the Division filed documents relating to the petition with the Division of Tax Appeals. Petitioner had until June 26, 1998 to file documents of his own and a brief, but none were filed. The Division then filed a brief, on July 10, 1998, outlining its position in this matter. Petitioner did not respond to the brief, although he was given until August 14, 1998 to do so.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Division was unable to locate a copy of petitioner's 1992 personal income tax return and, after advising petitioner of this fact, petitioner failed to present evidence that he filed such a return for 1992. Thus, the Administrative Law Judge concluded that no New York State personal income tax return was filed by petitioner for 1992 and that the Division properly estimated petitioner's 1992 State income tax liability relying on information petitioner supplied to the Federal government with his 1992 Federal income tax return. The Administrative Law Judge determined that petitioner failed to provide any evidence that his 1992 New York State income was erroneously determined, that his tax was improperly computed, that New York State tax was withheld from his 1992 income or that penalties were improperly imposed. Thus, the Administrative Law Judge sustained the Notice of Deficiency.

The Administrative Law Judge also concluded that there was no evidence that petitioner has been denied due process of law. The Administrative Law Judge noted that petitioner was

given notice of the Division's position and an opportunity to respond thereto at every stage of the proceedings. Petitioner, however, presented no evidence in support of his position.

### ***ARGUMENTS ON EXCEPTION***

On exception, petitioner asserts that it is a violation of his right to due process of law for the Division to rely on his 1992 Federal income tax return as the basis for calculating his New York State taxable income, that Tax Law § 689(e) is unconstitutional as applied to him, that giving a "presumption of correctness" to a properly issued Notice of Deficiency is an error and unconstitutional, and that the assessment procedures utilized by the Division violate his due process rights under the United States and New York State Constitutions.

The Division, in opposition, argues that the determination of the Administrative Law Judge was correct and that the issues raised on exception are the same arguments found to be without merit in an earlier action (*Matter of Geller*, Tax Appeals Tribunal, August 20, 1998) concerning an assessment issued to petitioner for tax year 1989.

### ***OPINION***

We affirm the determination of the Administrative Law Judge. We find that the Administrative Law Judge completely and adequately addressed the issues presented to him and we see no reason to modify them in any respect.

In *Matter of Geller (supra)*, we considered constitutional arguments raised by petitioner in relation to an assessment of New York State personal income tax for 1989. Additionally, in *Matter of Geller* (Tax Appeals Tribunal, May 13, 1999), we reviewed the same constitutional arguments in relation to an assessment of New York State personal income tax for 1991. These arguments are nearly identical to those which petitioner has raised in the present proceeding. In

the earlier cases, as in the present case, petitioner merely alleges violations of his constitutional rights. He has not provided any legal basis to support his position nor has he provided any evidence that would allow him to meet his burden of proof to show that the Division's assessment or the Administrative Law Judge's conclusion is unconstitutional as applied to him or in any way has deprived him of his due process rights under the law. Thus, relying on both prior cases involving petitioner, we find his arguments on exception to be without merit.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Alvin Geller is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Alvin Geller is denied; and
4. The Notice of Deficiency dated September 23, 1996 is sustained.

DATED: Troy, New York  
June 3, 1999

/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