

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

RAYMOND W. ALEXANDER :

DECISION
DTA NO. 817963

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 1995. :

Petitioner Raymond W. Alexander, P.O. Box 20098, New York, New York 10021-0061, filed an exception to the determination of the Administrative Law Judge issued on December 6, 2001. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Jennifer L. Hink, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed a brief in opposition and petitioner filed a reply brief. Petitioner's request for oral argument was denied.

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

ISSUE

Whether the Division of Taxation properly determined that petitioner, in order to exclude his wife's income earned in Massachusetts, must file separately rather than jointly with his spouse.

FINDINGS OF FACT

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

In 1995, petitioner lived in Smithtown on Long Island and earned wages in the amount of \$77,593.99 as a self-described clerk for the City of New York. Petitioner's wife, Alice Alexander, during 1995, lived in Mt. Washington, in the Berkshire region of Massachusetts, and earned wages as a clerk for the Stockbridge Housing Authority in the amount of \$18,426.01.

Petitioner and his wife filed a timely joint New York State personal income tax return for 1995, on which they reported only petitioner's wages from his employer, the City of New York, and not Mrs. Alexander's wages from her Massachusetts employer. Mrs. Alexander filed a Massachusetts resident income tax return for 1995, on which she reported her wages and claimed a refund of \$94.00 based on the difference between Massachusetts income tax due for 1995 of \$888.00 and Massachusetts income tax withheld of \$982.00.

The Division of Taxation ("Division") issued a Statement of Proposed Audit Changes dated October 16, 1998 against petitioner and his wife asserting tax due of \$1,996.79 plus penalty and interest for the year at issue. This statement provided the following explanation, in relevant part, as follows:

New York State has an exchange of information agreement with the Internal Revenue Service. The Internal Revenue Service provided us with information reported on your 1995 federal income tax return.

* * *

Information furnished by the Internal Revenue Service . . . indicates that your federal adjusted gross income was \$96,227.00, rather than \$76,272.00, as reported on your New York return.

The information we received from the Internal Revenue Service shows you had taxable wages of \$96,020.00, taxable interest income of \$249.00, taxable dividend income of \$661.00 and taxable refunds of state and local income taxes of \$2,297.00.

The Division then issued a Notice of Deficiency dated January 19, 1999 against petitioner and his wife asserting income tax due of \$1,996.79, plus penalty and interest. This notice referenced the Statement of Proposed Audit Changes detailed above.

By a Conciliation Order dated April 21, 2000, tax asserted due against petitioner and his wife was reduced from \$1,996.79 to \$1,006.97, and penalty was canceled. The reduction in tax resulted from a recomputation of petitioner's New York State income tax liability for 1995, based upon a change in filing status for petitioner from "married filing joint return" to "married filing separate return." By this changed filing status, only petitioner's income, and not his wife's, was subjected to New York State income tax for 1995.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that petitioner accused the Division of fraud and stonewalling at the hearing. However, the Administrative Law Judge determined that his position was not coherent, and that petitioner failed to establish any basis to further adjust the income tax deficiency for 1995, as reduced by the conciliation order dated April 21, 2000. The Administrative Law Judge concluded that the burden was upon petitioner to prove by clear and convincing evidence that the Division's assertion of tax due was erroneous, and he offered nothing to meet this burden (*see, Matter of Bello v. Tax Appeals Tribunal*, 213 AD2d 754, 623 NYS2d 363).

The Administrative Law Judge noted that petitioner and his wife were required to report as their adjusted gross income on their joint New York personal income tax return for 1995 their

federal adjusted gross income (Tax Law § 612[a]). Consequently, the Administrative Law Judge found that petitioner and his wife were required to include Mrs. Alexander's Massachusetts wages on their joint return. However, petitioner and his wife were then entitled to claim a credit against their New York income tax liability for *income taxes* paid to Massachusetts on Mrs. Alexander's wages earned in Massachusetts (Tax Law § 620). The Administrative Law Judge pointed out, however, that petitioner and his wife did not claim a credit for taxes paid to Massachusetts but rather erroneously failed to report Mrs. Alexander's wages from Massachusetts on the joint return.

As noted above, the conciliation order reduced tax due for 1995 from \$1,996.79 to \$1,006.97, a reduction of \$989.82. This reduction was based upon a change in filing status for petitioner from married filing *joint* return to married filing *separate* return. In this way, the Administrative Law Judge noted, petitioner's adjusted gross income for New York income tax purposes excluded Mrs. Alexander's Massachusetts wages. The Administrative Law Judge pointed out that this change in filing status was more beneficial to petitioner than merely allowing him and his wife to claim on a *joint* New York income tax return a credit for taxes paid to Massachusetts.

Based on the above factors, the Administrative Law Judge denied the petition and sustained the Notice of Deficiency as modified by the conciliation order.

ARGUMENTS ON EXCEPTION

Although 1995 is the only year at issue, petitioner argues, as he did below, that the Division has fraudulently taxed his wife's Massachusetts income for years.

OPINION

We find no merit to the petition. We affirm the determination of the Administrative Law Judge for the reasons stated therein. Petitioner has offered no evidence below, or any argument on exception, that would justify our modifying the determination of the Administrative Law Judge in any respect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Raymond W. Alexander is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Raymond W. Alexander is denied; and
4. The Notice of Deficiency dated January 19, 1999, as modified by the conciliation order dated April 21, 2000, is sustained.

DATED: Troy, New York
November 7, 2002

/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