

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
MICHAEL CIPOLLA	:	DECISION
	:	DTA NO. 818919
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the New	:	
York City Administrative Code for the Year 1999.	:	

Petitioner Michael Cipolla, 3030 Emmons Avenue, Apartment 1P, Brooklyn, New York 11235, filed an exception to the determination of the Administrative Law Judge issued on June 24, 2003. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Kevin R. Law, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a brief in opposition. 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.

ISSUES

I. Whether petitioner's wage income was subject to New York State and City personal income tax.

II. Whether the notice of deficiency issued by the Division of Taxation fails to meet the requirements of the Tax Law as it does not contain the signature or the seal of the Commissioner of Taxation and Finance.

III. Whether the imposition of a frivolous petition penalty was proper.

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 Statement of Proposed Audit Adjustment to Michael Cipolla (“petitioner”), dated October 2, 2000, which asserted New York State personal income tax due in the amount of \$2,266.00, plus penalty and interest, for a total amount due of \$2,627.86, and New York City income tax due in the amount of \$1,541.00, plus penalty and interest, for a total amount due of \$1,769.58, for tax year 1999. The additions to the tax alleged to be due were for negligence, a penalty equal to 50% of the amount of any interest due on a deficiency attributable to negligence or the intentional disregard of the Tax Law, a penalty for the underestimation of petitioner’s New York State personal income tax and a penalty for the underestimation of petitioner’s New York City personal income tax. The Statement of Proposed Audit Adjustment was issued by the Division after petitioner filed a timely 1999 New York State personal income tax return with a wage and tax statement, but did not report any wages on Line 1 of the return. Petitioner requested a refund of all New York State and New York City income taxes withheld.

On or about November 27, 2000, the Division of Taxation issued a Notice of Deficiency to petitioner which set forth additional tax due of \$3,807.00, penalty of \$470.33 and interest of \$193.29, for a total amount due of \$4,470.62.

Petitioner filed a timely request for a conciliation conference with the Bureau of Conciliation and Mediation Services. A conference was held on December 20, 2001, after

which an order was issued on February 1, 2002 sustaining the notice of deficiency in its entirety. Petitioner filed a petition with the Division of Tax Appeals on February 22, 2002, disputing the conciliation order on the basis of his belief that he had no obligation or duty to pay income taxes and that he had failed to receive a notice of deficiency signed by and with the seal of the Commissioner of Taxation and Finance.

During the year 1999 petitioner received from the New York Telephone Company wage income in the amount of \$52,354.00.

The Internal Revenue Service, as of November 2002, had not issued an assessment to petitioner for the year 1999. Petitioner's Federal income tax return for the year at issue, like the New York State return, indicated zero dollars (\$0.00) earned.

The Division of Taxation utilized the wages reported on the wage and tax statement issued by the New York Telephone Company of \$52,354.00 to calculate additional New York State and City personal income tax due on both the statement of proposed audit changes and the notice of deficiency. This amount has not been disputed by petitioner.

All of the documents issued by the Division were sent to petitioner at 3030 Emmons Avenue, Apartment 1P, Brooklyn, New York 11235, the same address used in the petition filed with the Division of Tax Appeals, which was signed by petitioner.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The issue presented to the Administrative Law Judge was whether petitioner, a resident of New York City, who was employed by the New York Telephone Company and received wages during the tax year 1999 in the amount of \$52,354.00, was properly subject to New York State and City personal income taxes.

Despite petitioner's arguments to the contrary, the Administrative Law Judge concluded that petitioner's wages were subject to taxation, that the Notice of Deficiency in this case was properly issued to him despite the lack of signature thereon by the Commissioner of Taxation and Finance and he imposed a frivolous petition penalty against petitioner pursuant to 20 NYCRR 3000.21 in the maximum amount of \$500.00.

ARGUMENTS ON EXCEPTION

On exception, petitioner reasserts the same arguments that were made to the Administrative Law Judge. Petitioner continues to argue that since his Federal income tax return for 1999 reported wages as \$0.00, New York State was required to follow the Federal return and accept his New York income tax return which also reported wages of \$0.00. Furthermore, petitioner alleges that New York State cannot disregard his filed tax return and calculate a new return on his behalf. Petitioner consistently maintains that New York State does not have personal jurisdiction over him.

The Division agrees with the determination of the Administrative Law Judge. The Division emphasizes that petitioner is merely restating typical tax protester arguments that have been routinely rejected by the courts. Therefore, the Division respectfully requests that the determination of the Administrative Law Judge be sustained.

OPINION

We have seen these arguments that petitioner has set forth previously and, each and every time, they have been dismissed as without merit (*see, Matter of Maloney*, Tax Appeals Tribunal, March 6, 2003 [we rejected that New York State did not have jurisdiction over a New York

resident]; *see also*, *Matter of Ellett*, Tax Appeals Tribunal, October 18, 2001; *Matter of Thomas*, Tax Appeals Tribunal, April 19, 2001). As the Administrative Law Judge adequately and correctly addressed the issues presented to him, we affirm his determination for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Michael Cipolla is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Michael Cipolla is denied;
4. The Notice of Deficiency dated November 27, 2000 is sustained; and
5. The penalty in the amount of \$500.00 imposed for the filing of a frivolous petition is sustained.

DATED: Troy, New York
March 4, 2004

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner