STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
THOMAS J. MARCINEK	:	DECISION DTA NO. 821742
for Redetermination of Deficiencies or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 2000 and 2001.	:	

Petitioner, Thomas J. Marcinek, filed an exception to the determination of the Administrative Law Judge issued on November 6, 2008. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Peter B. Ostwald, 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. Oral argument was not requested.

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

ISSUE

Whether the Division of Taxation properly determined additional personal income tax due from petitioner for the years 2000 and 2001.

FINDINGS OF FACT

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

Following an audit of petitioner for the years 2000 and 2001 (the years in issue) by the Internal Revenue Service (IRS), information concerning petitioner's federal return was disclosed to the Division of Taxation (Division) in a report dated May 17, 2004, as authorized by IRC § 6103(d), including a New York City home address and sufficient income to require the filing of New York personal income tax returns. Petitioner's federal income tax returns for 2000 and 2001 each indicated that his home address was 104 Woolley Avenue, Staten Island, NY 10314.

The Division searched its records of personal income tax returns for the years 2000 and 2001 but found no returns for petitioner under his name or social security number.

Based upon the information received from the IRS, the Division determined unreported wage income for 2000 of $34,552.00, allowed for a standard deduction of $7,500.00 and found New York taxable income of $27,052.00. The New York State and City of New York income taxes due on this income were found to be $2,374.00. In addition to the tax, the Division asserted interest for late payment or underpayment of tax and penalties for failing to file a return within five months of its due date, negligence and intentional disregard of the Tax Law. This information was forwarded to petitioner in a Statement of Proposed Audit Changes, dated November 28, 2005. Petitioner responded on December 13, 2005, stating that employees of the IRS "illegally entered fraudulent data" in the computers of the Internal Revenue Service thus forming an invalid basis for any assessment by New York State.

The Division issued to petitioner a Notice of Deficiency for the tax year 2000, dated March 27, 2006, asserting additional tax of $2,374.00, interest of $874.77 and penalties of $1,149.58.

The information received from the IRS for 2001 revealed unreported wage income of $40,568.00, business income of $1,850.00, capital gain of $1,064.00 and a federal adjustment to income of $131.00, resulting in federal and New York adjusted gross income of $43,351.00.

After allowing for a standard deduction of $7,500.00, the Division determined New York State income tax due of $2,060.00 and New York City tax due of $1,107.00, less a city school tax credit of $62.50. The Division also asserted interest for late payment or underpayment of tax and penalties for not filing a return within five months of its due date and underestimation of tax. For the tax year 2001, there were federal changes that were not reported to the State of New York, which were incorporated into the computation of the deficiency. The calculations and explanation were forwarded to petitioner in a Statement of Proposed Audit Changes, dated August 14, 2006.

The Division issued a Notice of Deficiency to petitioner, dated October 10, 2006, which asserted additional New York State and New York City personal income tax of $3,104.50, interest of $1,076.04 and penalties of $871.29.

Petitioner was issued a New Jersey driver's license on November 14, 2001 that listed his address as 17 Red Maple Drive, Brick, New Jersey. In his application for the license, dated October 31, 2001, petitioner stated that he had a valid driver license in another, unnamed state.

Petitioner registered to vote in Ocean County, New Jersey, on September 30, 2002. His voter registration card indicated that, as of September 30, 2002, his address was 17 Red Maple Drive, Brick, New Jersey.

Petitioner did not file a tax return with the State of New Jersey for the year 2000.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that petitioner did not file a New York State tax return for either year in issue despite indicating on his Federal income tax returns that he resided in Staten Island for both 2000 and 2001. Although petitioner alleged that he was not a domiciliary or resident of New York for either 2000 and 2001, the Administrative Law Judge

stated that since petitioner supplied a New York home address to the IRS on his federal forms 1040, which forms were signed as true and accurate, petitioner created a rebuttable presumption that he was a domiciliary or resident of New York State. The Administrative Law Judge held that petitioner's proof was wholly inadequate of that required. As such, the Administrative Law Judge concluded that petitioner failed to sustain his burden of proof to establish that he was a domiciliary or resident of New Jersey as he claimed during these years.

ARGUMENTS ON EXCEPTION

Petitioner, on exception, does not challenge any specific finding of fact or conclusions of law of the Administrative Law Judge. He does make various ***ad hominem*** attacks against the Administrative Law Judge for refusing to accept documents into evidence after the record had been closed. Petitioner urges that the Administrative Law Judge relied on an invalid report from the Internal Revenue Service. Petitioner disagrees with the findings and conclusions of the Administrative Law Judge, in general, as "wholly inconsistent with fairness, equity and logic" (Petitioner's exception, p. 2).

Petitioner urges that the Administrative Law Judge should be required to produce evidence to support his determination. Petitioner also alleges that some unknown IRS employees falsified evidence, which was, in turn, wrongfully used by the Administrative Law Judge in this case. Most, if not all, of petitioner's arguments on exception are based on exhibits filed with his exception.[1]

[1] Petitioner was notified by letter dated January 5, 2009, from Jean A. McDonnell, Esq., Secretary to the Tax Appeals Tribunal, that "any evidentiary materials submitted by either party that are not part of the record established by the Administrative Law Judge will not be considered by the Tribunal in the rendering of its decision in this matter."

Petitioner also claims that he worked in New Jersey and had no Federal or New York State adjusted gross income during the subject years.

Petitioner contends that he used the New York address he listed on his federal tax returns, i.e., 104 Woolley Avenue, Staten Island, New York, only to insure that he would receive certified mail sent to him by the IRS. Petitioner claims his parents live at the address and were always available to sign for letters from the IRS, thus, preventing him from becoming a victim of IRS abuse. Petitioner further states that he visited the Staten Island address only once or twice a month during the years in issue.

The Division argues that petitioner was a domiciliary or resident of New York during the years in issue and was required to file New York personal income tax returns. The Division believes it was warranted in using the federal tax information at hand to calculate petitioner's New York personal income tax for the years in issue. Finally, the Division contends that petitioner has not met his burden of proving that the notices issued herein were erroneous.

OPINION

Petitioner argues that the Administrative Law Judge erred in refusing to accept certain documents after the record in this matter was closed. Therefore, petitioner attempted to submit these documents with the brief in support of his exception filed with the Tax Appeals Tribunal. Such documents were not considered by the Tribunal in rendering this decision.

We have held that a fair and efficient hearing process must be defined and final, and the acceptance of evidence after the record is closed is not helpful towards that end and does not provide an opportunity for the adversary to question the evidence on the record (***see, Matter of Purvin***, Tax Appeals Tribunal, October 9, 1997; ***see also***, ***Matter of Schoonover***, Tax Appeals

Tribunal, August 15, 1991). As a result, we reject petitioner' s attempts to introduce additional evidence into the record at this late juncture.

Petitioner continues to claim that he did not reside in Staten Island during the years in question. However, we agree with the Administrative Law Judge that since petitioner used his Staten Island address on both Federal forms 1040 for 2000 and 2001, such information provided the Division with a rational basis upon which to issue Notices of Deficiency for petitioner's failure to file both New York State and City income tax returns for those tax years. In ***Matter of Atlantic & Hudson Ltd. Partnership*** (Tax Appeals Tribunal, January 30, 1992), we held that:

> where, as here, petitioner has failed to make any inquiry into the audit method or calculation, the presumption of correctness raised by the issuance of the assessment provides the rational basis for the assessment. To hold otherwise would be in irreconcilable conflict with the principles that the Division does not have the burden to demonstrate the propriety of its assessment and that the petition has a heavy burden to prove the assessment erroneous.

The record establishes that petitioner clearly failed to sustain his burden of proof in this case. Petitioner's mere assertions do not rise to the level of proof by clear and convincing evidence. We find that the Administrative Law Judge completely and adequately addressed the issue presented to him and correctly applied the relevant law to the facts of this case. Petitioner has offered no evidence below, and no argument on exception, that would provide a basis for us to modify the determination in any respect.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

1. The exception of Thomas Marcinek is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Thomas Marcinek is denied; and

4. The notices of deficiency dated March 27, 2006 and October 10, 2006 are sustained.

DATED: Troy, New York
August 13, 2009

/s/ Charles H. Nesbitt
Charles H. Nesbitt
President

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