

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
DUANE MURPHY BECKMAN	:	DECISION
	:	DTA NO. 821998
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Years 2000 through 2003.	:	

Petitioner, Duane Murphy Beckman, filed an exception to the determination of the Administrative Law Judge issued on July 9, 2009. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation did not file a brief in opposition. Petitioner did not file 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 may properly impose New York personal income tax on income earned from off-reservation sources by a member of the Haudenosaunee, Onondaga Nation.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact "4," which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

Petitioner, Duane Murphy Beckman, did not file New York personal income tax returns for any of the four years at issue, 2000, 2001, 2002 and 2003. Rather, the Division of Taxation ("Division") received information from the Internal Revenue Service ("IRS") regarding income he had received, pursuant to the federal/state information exchange program. This information from the IRS showed that petitioner had federal adjusted gross income for the years at issue as follows:

Year	Federal adjusted gross income
2000	\$28,927.00
2001	\$47,037.00
2002	\$81,178.00
2003	\$57,317.00

The Division, utilizing the information received from the IRS, prepared a separate Statement of Proposed Audit Changes dated September 21, 2006 for each of the four years. For 2000, the statement asserted personal income tax due of \$998.00, plus penalty and interest, computed as follows:

New York Adjusted Gross Income	\$28,927.00
Standard New York Deduction	(7,500.00)
Dependent Exemption	(1,000.00)
New York Taxable Income	20,427.00
New York State Tax	1,002.00
New York State Tax Withheld	<u>(4.00)</u>
Personal Income Tax Due	\$ 998.00

For 2001, the statement asserted personal income tax due of \$1,817.00, plus penalty and interest, computed as follows:

New York Adjusted Gross Income	\$47,037.00
Standard New York Deduction	(7,500.00)
Dependent Exemption	(1,000.00)
New York Taxable Income	38,537.00
New York State Tax	2,242.00
New York State Tax Withheld	<u>(425.00)</u>
Personal Income Tax Due	\$ 1,817.00

For 2002, the statement asserted personal income tax due of \$2,878.00, plus penalty and interest, computed as follows:

New York Adjusted Gross Income	\$81,178.00
Standard New York Deduction	(7,500.00)
Dependent Exemption	(1,000.00)
New York Taxable Income	72,678.00
New York State Tax	4,581.00
New York State Tax Withheld	<u>(1,703.00)</u>
Personal Income Tax Due	\$ 2,878.00

For 2003, the statement asserted personal income tax due of \$2,632.00, plus penalty and interest, computed as follows:

New York Adjusted Gross Income	\$57,317.00
Standard New York Deduction	(7,500.00)
Dependent Exemption	(1,000.00)
New York Taxable Income	48,817.00
New York State Tax	2,948.00
New York State Tax Withheld	<u>(316.00)</u>
Personal Income Tax Due	\$ 2,632.00

The Division then issued four notices of deficiency that asserted tax, plus penalty and interest, in conformance with the amounts of tax shown due on the respective statements of proposed audit changes, as follows:

Year	Date of Notice of Deficiency	Assessment ID	Tax asserted due
2000	November 16, 2006	L-027699036	\$998.00
2001	November 16, 2006	L-027699037	\$1,817.00
2002	March 26, 2007	L-027699038	\$2,878.00
2003	November 16, 2006	L-027699039	\$2,632.00

Finding of fact "4" of the Administrative Law Judge's determination is modified to read as follows:

During the years at issue, petitioner earned his income as an iron worker. As a resident of Syracuse, New York, he would go to the local union halls, and, "they would send me out to a job." He worked on the erection of steel for high rises in Manhattan, New York, Jersey City and Hoboken, New Jersey and Harrisburg, Pennsylvania during the subject years.¹

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge observed that a notice of deficiency properly issued to a taxpayer carries with it a presumption of correctness and the burden of proof is on the taxpayer to demonstrate that the deficiency assessment is erroneous by clear and convincing evidence. In this case, the Administrative Law Judge found that the Division's reliance on information obtained from the IRS, as detailed above, met the rational basis test, in the first instance, for the notices of deficiency at issue.

The Administrative Law Judge pointed out that petitioner's income during the years at issue was earned from off-reservation sources as an iron worker and not from on-reservation sources. In addition, the Administrative Law Judge noted that, although the city of Syracuse may have been part of the lands of the Onondaga nation in ages past, petitioner's current residence is within the city of Syracuse and there is no evidence or even an allegation by petitioner that he

¹We have modified finding of fact "4" to more fully reflect the relevant portions of the record.

lived on reservation land during the years at issue. Given the decision in *Matter of George v. Tax Appeals Tribunal* (155 AD2d 784 [1989]), the Administrative Law Judge found that the principle of stare decisis was applicable to petitioner. In *Matter of George*, the court specifically rejected arguments similar to petitioner's:

[Mr. George's] references to the US Constitution, enactments and treaties are unpersuasive since no reasonable reading of those references reveal any indication that Congress intended income earned from off-reservation sources to be exempt from State taxation (*Matter of George v. Tax Appeals Tribunal, supra*).

Consequently, the Administrative Law Judge found that petitioner failed to satisfy his burden to demonstrate that the notices of deficiency were erroneous by clear and convincing evidence.

Furthermore, the Administrative Law Judge concluded that petitioner failed to offer evidence sufficient to show reasonable cause for the abatement of penalties and denied the petition.

ARGUMENTS ON EXCEPTION

Petitioner argues on exception, as he did below, that he is a natural born citizen of the Haudenosaunee, Onondaga Nation. Petitioner claims that he resides on the lands² of the Haudenosaunee, but states that he has never claimed to live on reservation land since he does not believe in artificial boundaries. Petitioner claims that the Division "has no authority to levy a tax on the Haudenosaunee." Relying on the Two Row Wampum treaty "between the Haudenosaunee and the European immigrant nations," petitioner maintains that New York cannot make "compulsory laws" for the Haudenosaunee.

² While petitioner's current residence is within the City of Syracuse, there is no evidence or even an allegation by petitioner that his residence during the years at issue was on reservation land.

OPINION

We affirm the determination of the Administrative Law Judge for the reasons stated therein. The Administrative Law Judge has fully and correctly addressed each of the issues raised by the parties. Petitioner has offered no evidence below and no arguments on exception that would justify our modifying the determination in any respect.

ACCORDINGLY, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Duane Murphy Beckman is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Duane Murphy Beckman is denied; and
4. The three notices of deficiency dated November 16, 2006 and the Notice of Deficiency dated March 26, 2007 are sustained.

DATED: Troy, New York
February 11, 2010

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

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