

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CHARLES L. KYTE	:	DECISION
	:	DTA NO. 822518
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 Administrative	:	
Code of the City of New York for the Year 2004.	:	

Petitioner, Charles L. Kyte, filed an exception to the determination of the Administrative Law Judge issued on May 13, 2010. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Margaret T. Neri, Esq., of counsel).

Neither party filed a brief in this matter. 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 disallowed the pension and annuity exclusion claimed by petitioner on his New York State resident income tax return for the year 2004.

FINDINGS OF FACT

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

Petitioner, Charles L. Kyte, timely filed his New York State and City resident personal income tax return for the 2004 tax year. On that return, petitioner reported federal adjusted gross

income in the amount of \$36,235.00, added college choice tuition savings distributions (line 21 on Form IT-201) in the amount of \$948.00 and then subtracted a total of \$9,444.00, consisting of pensions of New York State and local governments and the federal government (line 25 on Form IT-201) of \$9,076.00¹ and college choice tuition savings deductions of \$368.00. Consequently, he determined his New York adjusted gross income to be \$27,739.00. After claiming a New York State itemized deduction in the amount of \$16,312.00, consisting of, among other items, a college tuition itemized deduction of \$10,000.00, he reported taxable income of \$11,427.00. He then calculated total New York State and City tax due for 2004 of \$809.00, consisting of New York State tax due in the amount of \$477.00 and New York City resident tax due in the amount of \$332.00. Against tax computed due of \$809.00, petitioner showed credits and payments totaling \$858.00, consisting of a City of New York school tax credit of \$63.00, New York State tax withheld of \$489.00 and New York City resident tax withheld of \$306.00. Finally, he claimed a refund of \$49.00.

The Division of Taxation (Division) processed petitioner's 2004 tax return, and corrected the withholding tax amount claimed on the return to correspond with the amounts listed on petitioner's wage and tax statements. As a result of that correction, petitioner's refund was increased from \$49.00 to \$284.00. The Division issued a Statement of Income Tax Adjustment, dated September 30, 2005, applying total credits and payments in the amount of \$1,093.00 against total New York State and City tax due in the amount of \$809.00 and issued an adjusted refund in the amount of \$284.00.

¹ Petitioner's pension distribution was from a 403(b) pension plan, not a state, local or U.S. government pension as reported on his New York State income tax return.

Subsequently, the Division conducted a desk audit of petitioner's 2004 resident income tax return. Based upon a review of records in its files and information available to it, the Division determined that petitioner was not entitled to the claimed pension exclusion because he had not attained the age of 59½ during the 2004 tax year.

On August 24, 2007, the Division issued a Statement of Proposed Audit Changes to petitioner asserting additional New York State and New York City personal income tax due in the amount of \$847.00, plus interest, for a total amount due of \$1,029.98 for the year 2004. The statement explained that New York State allows a pension and annuity exclusion of up to \$20,000.00 for pension and annuity income received after an individual reaches the age of 59½ and included as part of the income reported on a taxpayer's return. The statement further explained that information available to the Division indicated that petitioner was not 59½ during the 2004 tax year and, therefore, was not entitled to the pension and annuity exclusion claimed. However, any state, local or U. S. government pension was allowed based upon records available in the Division's files.

The Statement of Proposed Audit Changes reflected the auditor's determinations and contained a corrected tax computation as follows. Petitioner's New York taxable income per his tax return in the amount of \$11,427.00 was increased by \$9,076.00, the amount of the disallowed pension and annuity income exclusion, and the corrected New York taxable income was determined to be \$20,503.00. The New York State recomputed tax liability was determined to be \$1,077.00, less tax previously stated or adjusted of \$477.00, for additional New York State tax due in the amount of \$530.00. The New York City recomputed tax liability was determined to be \$649.00, less tax previously stated or adjusted of \$332.00, for additional New York City tax due in the amount of \$317.00.

On October 18, 2007, the Division issued to petitioner Notice of Deficiency L-029090305-7 indicating additional tax due for the year 2004 of \$847.00, plus interest. Following a conciliation conference held on July 8, 2008, the Bureau of Conciliation and Mediation Services issued a Conciliation Order (CMS No. 221419) dated August 29, 2008, sustaining the statutory notice.

Petitioner did not submit any documentation regarding the pension and annuity income distribution that he received in 2004. Nor did petitioner submit any documentation showing that he attained the age of 59½ during the 2004 tax year.

Petitioner did not report any federal adjustments to income on line 17 of his 2004 resident income tax return. No documentation was submitted regarding interest petitioner allegedly paid on a qualified education loan for the year 2004.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began by noting that the Division processed petitioner's 2004 tax return and corrected the withholding tax amount claimed on the return to correspond with the amounts listed on petitioner's wage and tax statements. As a result of that correction, and contrary to petitioner's claim, the Division initially issued an adjusted refund increasing the refund amount to \$284.00.

The Administrative Law Judge next addressed the applicable law. Tax Law § 612(a)² provides that the adjusted gross income of a resident individual is his federal adjusted gross income with certain modifications provided for in subsections (b) and (c) of Tax Law § 612. Tax

² As the provisions of the New York City Administrative Code are virtually identical to the provisions of the Tax Law, references to the Tax Law herein, unless specifically noted, are also references to the applicable sections of the New York City Administrative Code.

Law § 612(c) provides, in relevant part, that there shall be subtracted from federal adjusted gross income:

(3)(i) Pensions to officers and employees of this state, its subdivisions and agencies, to the extent includible in gross income for federal income tax purposes;

(ii) Pensions to officers and employees of the United States of America, any territory or possession or political subdivision of such territory or possession, the District of Columbia, or any agency or instrumentality of any one of the foregoing, to the extent includible in gross income for federal income tax purposes;

(3-a) Pensions and annuities received by an individual who has attained the age of fifty-nine and one-half, not otherwise excluded pursuant to paragraph three of this subsection, to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars

Although the petition challenged the Division's disallowance of the pension exclusion, the Administrative Law Judge pointed out that petitioner failed to submit any documentary evidence concerning his age in 2004. Since he failed to offer proof that he had attained the age of 59½ in 2004, the Administrative Law Judge found that petitioner did not come within the provisions of the statute and could not properly subtract his pension distribution from federal adjusted gross income in computing New York adjusted gross income (Tax Law § 612[c][3-a]; Tax Law § 689[e]).

Petitioner also argued that this tax reassessment constitutes double taxation because his 2004 tax records indicate that federal and state taxes were previously withheld from his distribution. This claim was also rejected by the Administrative Law Judge, since petitioner did not submit any documentation to support it. The Administrative Law Judge found that based on this record, it is impossible to determine if any federal or New York State income taxes were withheld from petitioner's pension distribution.

Petitioner next claimed that his original tax calculations were correct because an early withdrawal penalty was assessed and a deduction for interest paid on qualified education loans up to \$2,500.00 per year may be allowed. With respect to the early withdrawal penalty that petitioner claims was assessed, the Administrative Law Judge noted that petitioner failed to offer any written evidence regarding the 403(b) pension distribution received from Prudential Financial in 2004.³ The Administrative Law Judge noted that the starting point for determining New York personal income tax liability is a taxpayer's federal adjusted gross income (Tax Law § 612[a]; 20 NYCRR 112.1). The Administrative Law Judge observed that although the law allows a deduction for the taxable year in an amount equal to the interest paid during the taxable year on any qualified education loan, petitioner did not submit any documentation that he had a qualified education loan or interest paid on such loan in 2004 (IRC §§ 62[a], 221). As such, the Administrative Law Judge rejected this argument. The Administrative Law Judge also observed that petitioner did not report any federal adjustments to income on his 2004 New York State income tax return as filed.

ARGUMENTS ON EXCEPTION

On exception, petitioner makes the same arguments as he did below, to wit:

Petitioner asserts that the Division conducted an audit of his 2004 personal income tax return in 2005 and reduced his refund to account for discrepancies similar to those under review now. Petitioner also argues that he properly reported the New York State tax subtraction of the pension income distribution based upon tax documentation provided by Prudential Financial.

³ The Administrative Law Judge observed that if petitioner had shown that his pension distribution was subject to the 10% additional tax on an early distribution from a qualified retirement plan under IRC § 72(t) (early withdrawal penalty), the federal tax due for the year 2004 would have been increased by such an early withdrawal penalty. The amount of any early withdrawal penalty that may have been assessed would not have been deductible from petitioner's gross income under IRC § 275(a)(1).

Specifically, he alleges that Prudential Financial reported the distribution as a “403b/Federal/State pension disbursement” on the tax form provided to both the Internal Revenue Service and to him in 2004. Petitioner further argues that this tax reassessment constitutes double taxation because his 2004 tax and fiscal records indicate that federal and state taxes were previously withheld from his distribution, which were used for his undergraduate and graduate expenses. Petitioner states that he did not submit any documentation regarding his pension and annuity income for 2004 because he had submitted all “relevant documentation” at the Bureau of Conciliation and Mediation Services (BCMS). The Administrative Law Judge concluded that petitioner was not entitled a deduction for interest paid on qualified education loans, since he offered no documentation to show that he had such expenses. Petitioner again states that all relevant evidence was submitted to BCMS, and continues to assert that his original tax calculations were correct.

OPINION

We affirm the determination of the Administrative Law Judge for the reasons stated therein. For a petitioner to prevail before the Division of Tax Appeals, he must provide evidence sufficient to support his position. It is not sufficient to merely assert that such evidence has been provided to someone else at an earlier time. We must base our decision upon the record in this forum, which is completely separate from the BCMS. Therefore, we agree with the Administrative Law Judge that petitioner has offered no evidence in this record sufficient to support his arguments. We conclude that the Administrative Law Judge has fully and correctly addressed each of the arguments presented. We can find no justification, based upon this record, on which to modify the determination of the Administrative Law Judge in any respect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Charles L. Kyte is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Charles L. Kyte is denied; and
4. The Notice of Deficiency L-029090305-7 dated October 18, 2007 is sustained.

DATED: Troy, New York
February 4, 2011

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

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

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner