

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>DUANE MURPHY BECKMAN</b>	:	DETERMINATION
	:	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.	:	

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Petitioner, Duane Murphy Beckman, filed a petition 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.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on December 15, 2008 at 9:00 A.M., with all briefs to be submitted by March 9, 2009, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Daniel Smirlock, Esq. (John E. Matthews, Esq., of counsel).

***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***

1. 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

2. 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

3. The Division then issued four notices of deficiency which 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

4. During the years at issue, petitioner earned his income as an iron worker. He would go to the local union halls, and “they send me out to a job.” He worked on the erection of steel for

high risers in Manhattan,<sup>1</sup> including the Time Warner building on Manhattan's Columbus Circle: "I think they went up to 70-some floors. I left it at 60."

### ***SUMMARY OF PETITIONER'S POSITION***

5. Petitioner is "a natural born citizen of the Haudenosaunee, Onondaga Nation." Residing "in the lands<sup>2</sup> of the Onondaga Nation," petitioner claims that the Division of Taxation "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.

### ***CONCLUSIONS OF LAW***

A. When the Division issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to the notice, and the burden of proof is on the taxpayer to demonstrate that the deficiency assessment is erroneous by clear and convincing evidence (*Matter of O'Reilly*, Tax Appeals Tribunal, May 17, 2004). In addition, the Tax Appeals Tribunal has also noted that "the question to be asked in determining the validity of an assessment in the first instance is whether the assessment is rational, not whether it is correct" (*Matter of Bernstein*, Tax Appeals Tribunal, December 24, 1992). In the matter at hand, the Division's reliance on information obtained from the IRS, as detailed in Findings of Fact 1 and 2, meets the rational basis test, in the first instance, for the notices of deficiency at issue.

B. In *Matter of George v. Tax Appeals Tribunal* (155 AD2d 784, 548 NYS2d 66, 67 [1989]), the court confirmed the Tribunal's decision that "income earned from off-reservation

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<sup>1</sup> Petitioner testified that he also worked as an iron worker in New Jersey and Pennsylvania during the years at issue.

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

sources” is not “exempt from state taxation.” The petitioner in *Matter of George* was “a member of the Onondaga Indian Nation, Six Nations Iroquois Confederacy (Cayugas, Mohawks, Oneidas, Onondagas, Senecas and Tuscaroras)” (*Matter of George*, Tax Appeals Tribunal, July 14, 1988, **confirmed** 155 AD2d 784, 548 NYS2d 66 [1989]).

C. As noted in Finding of Fact 4, 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, although the city of Syracuse might have been part of the lands of the Onondaga nation in ages past, as noted in Footnote 2, petitioner’s current residence is within the city of Syracuse and there is no evidence or even an allegation by petitioner that his residence during the years at issue was on reservation land. In sum, given the decision in *Matter of George v. Tax Appeals Tribunal*, the principle of stare decisis is properly applied to petitioner. In that matter, 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*, 548 NYS2d at 67.)

Consequently, petitioner has not met his burden to demonstrate that the notices of deficiency were erroneous by clear and convincing evidence (*Matter of Avildsen*, Tax Appeals Tribunal, January 26, 1995).

D. Furthermore, it is concluded that petitioner has not established reasonable cause for the abatement of penalties (*see CBS Corp. v Tax Appeals Tribunal*, 56 AD3d 908, 867 NYS2d 270 [2008], *lv denied* 12 NY3d 703, 876 NYS2d 704 [2009] [the court reaffirmed the stiff standard imposed upon a taxpayer to establish that the failure to pay tax was due to reasonable cause and not willful neglect emphasizing that “willfulness does not require an intent to deprive the

government of its money but only something more than accidental nonpayment’ (*Matter of Auerbach v. State Tax Commn.*, 142 AD2d at 395)’’]). Here, petitioner’s failure to pay New York State personal income tax was something much more than accidental.

E. The petition of Duane Murphy Beckman is denied and the three notices of deficiency dated November 16, 2006 and the Notice of Deficiency dated March 26, 2007 are sustained.

DATED: Troy, New York  
July 9, 2009

/s/ Frank W. Barrie  
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ADMINISTRATIVE LAW JUDGE