

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
DUANE MURPHY BECKMAN : ORDER
for Redetermination of Deficiencies or for Refund of New : DTA NO. 821998
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 2000, 2001, 2002 and 2003. :

Petitioner, Duane Murphy Beckman, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 2000, 2001, 2002 and 2003.

Pursuant to Tax Law § 2006(6) and 20 NYCRR 3000.9(b), by a motion dated March 6, 2007, the Division of Taxation, which appeared by Daniel Smirlock, Esq. (John W. Matthews, Esq., of counsel), moved for summary determination on the grounds that there were no material issues of fact and the undisputed facts mandated a finding in its favor or in the alternative that the petition should be dismissed for failure to state a cause for relief, pursuant to 20 NYCRR 3000.9(a)(1)(vi). Petitioner, appearing pro se, filed answering papers on August 6, 2008, which commenced the 90-day period for issuance of this order. After due consideration of the motion record, Frank W. Barrie, Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. Petitioner, Duane Murphy Beckman, did not file New York State 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. Petitioner asserts that he is “a natural born citizen of the Haudenosaunee, Onondaga Nation.” Residing “in the lands of the Onondaga Nation,” petitioner claims that the Division of Taxation “has no authority to levy a tax on the Haudenosaunee.”

CONCLUSIONS OF LAW

A. A motion for summary determination may be granted,

[I]f, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

B. Tax Law § 612(a) provides that:

The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year

In the matter at hand, the Division of Taxation received information from the IRS concerning petitioner's federal adjusted gross income for each of the years at issue. As noted in the Findings of Fact, it then utilized such information to calculate petitioner's New York personal income tax due by using amounts shown as petitioner's federal adjusted gross income as petitioner's New York adjusted gross income, which comports with the above statutory definition of New York adjusted gross income.

C. Petitioner does not contest the fact that he did not file and pay New York personal income tax. Rather, his challenge to the assertion of tax due is based upon his claim that as a member of the Haudenosaunee, Onondaga Nation, the Division lacks authority to levy a tax on him.

D. In *Matter of George v. Tax Appeals Tribunal* (155 AD2d 784, 548 NYS2d 66, 67 [1989]), the court noted that "income earned from off-reservation sources" is not "exempt from state taxation." In contrast, income earned from on-reservation sources may be exempt from state taxation. The motion record does not disclose any factual details concerning the source of petitioner's income, notably whether it was earned from off-reservation or on-reservation

sources. Consequently, the Division's motion for summary determination is denied because it has not been established that no material and triable issue of fact is presented. Since summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is "arguable" (*Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 AD2d 572, 536 NYS2d 177 [1989]). Further, if petitioner's income was from on-reservation sources, his petition states a cause for relief, and therefore the Division's alternative motion to dismiss the petition is also denied.

E. This matter shall be set down for hearing in Troy, New York, on December 15, 2008 at 10:45 A.M., with a Notice of Hearing to be issued in due course.

DATED:Troy, New York
October 9, 2008

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE