

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
BENJAMIN AND SHARYN SOLEIMANI	:	DETERMINATION
	:	DTA NO. 824288
for Redetermination of a Deficiency 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 Year 2007.	:	

Petitioners, Benjamin and Sharyn Soleimani, filed a petition for redetermination of a deficiency 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 year 2007.

On July 22, 2011, the Division of Taxation, by its representative, Mark F. Volk, Esq. (John E. Matthews, Esq., of counsel), filed a motion seeking dismissal of the petition or, in the alternative, summary determination in its favor pursuant to 20 NYCRR 3000.5, 3000.9(a)(1) and 3000.9(b). Accompanying the motion was the affidavit of John E. Matthews, Esq., dated July 20, 2011, and annexed exhibits supporting the motion. Petitioners, appearing by Blank Rome LLP (Joseph T. Gulant, Esq., of counsel), did not respond to the Division of Taxation's motion. Petitioners' response was due on August 19, 2011, which date began the 90-day period for the issuance of this determination. After due consideration of the affidavit and documents submitted, and all pleadings filed in this matter, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation has subject matter jurisdiction to entertain the petition.

FINDINGS OF FACT

1. On October 15, 2008, petitioners electronically filed a New York State Resident Income Tax Return, form IT-201, indicating total New York State and City income tax liability of \$253,259.00. The return stated that personal income tax for the year at issue had been withheld in the amount of \$10,063.00.

2. On November 17, 2008, the Division of Taxation (Division) issued to petitioners a Notice and Demand for Payment of Tax Due in the amount of \$242,966.00, plus penalty and interest. The notice indicated that petitioners' return indicated tax due of \$253,259.00 and that petitioners had made timely payments of \$10,293.00, including a City of New York school tax credit of \$230.00, leaving an unpaid balance due of \$242,966.00. Penalties and interest were also assessed for petitioners' failure to timely pay the tax due as indicated on their return.

3. On April 5, 2011, petitioners filed a petition with the Division of Tax Appeals protesting the Notice and Demand.

CONCLUSIONS OF LAW

A. Tax Law § 2006 sets forth the functions, powers and duties of the Tax Appeals Tribunal including, in relevant part at subsection four thereof, as follows:

To provide a hearing as a matter of right, to any petitioner upon such petitioner's request, pursuant to such rules, regulations, forms and instructions as the tribunal may prescribe, *unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter.* (Emphasis added.)

B. Tax Law § 682(a) provides that the amount of tax which a return shows to be due shall be deemed to be assessed on the date of filing of the return, in this case, October 15, 2008.

Pursuant to Tax Law § 692(b), the commissioner of taxation and finance is authorized to issue a notice and demand to each person liable for any amount of tax, penalty and interest, which has been assessed but remains unpaid. Here, the Division properly issued to petitioners a notice and demand for the amount of tax shown to be due on their 2007 personal income tax return that remained unpaid.

C. Tax Law § 173-a (as added by L 2004, ch 60, eff August 20, 2004), applying to notices and demands and notices of additional tax due issued on or after December 1, 2004, amended the Tax Law to specifically state that a taxpayer shall not be entitled to a hearing before the Division of Tax Appeals with respect to, inter alia, the issuance of a notice and demand.

D. The Notice and Demand in this matter, based upon petitioners' failure to fully pay to New York State the amount of tax shown to be due for the year in question, was issued against petitioners on November 17, 2008. Accordingly, Tax Law § 173-a serves, as a matter of law, to preclude petitioners from obtaining a hearing with respect to the subject Notice and Demand, which was issued after December 1, 2004 (*Matter of Chait*, Tax Appeals Tribunal, April 22, 2010).

E. The petition of Benjamin and Sharyn Soleimani is hereby dismissed.

DATED: Troy, New York
September 29, 2011

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE