STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition of **MATTHEW J. RYAN** for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2009.	:	DECISION DTA NO. 830219

Petitioner, Matthew J. Ryan, filed an exception to the determination of the Administrative Law Judge issued on September 14, 2023. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Stephanie M. Lane, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a letter brief in reply. Oral argument was requested, granted and scheduled to be heard on October 24, 2024. On September 24, 2024, petitioner withdrew the request for oral argument. The scheduled oral argument on October 24, 2024 remained as the date that began the six-month period for issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner has met his burden of proving that the notice of deficiency issued by the Division of Taxation for the year 2009 was erroneous.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except we have

modified findings of fact 1 and 22 for clarity. These facts are set forth below.

1. Petitioner, Matthew J. Ryan, filed petitions with the Division of Tax Appeals on December 31, 2020, challenging a conciliation order dated December 11, 2020 (conciliation order), dismissing petitioner's request for a conciliation conference.[1] The conciliation order, which was attached to the petitions, references a notice and demand (assessment ID number L-020421479) for tax year 2000; and a notice of deficiency and a notice and demand (both bearing assessment ID number L-041800571) for tax year 2009.

2. On April 17, 2010, petitioner filed an application for automatic six-month extension of time to file for individuals, form IT-370 (application), requesting additional time to file his New York State personal income tax return for the year 2009 (return). The application was in petitioner's name only and listed an address in Troy, New York. The application did not show a balance due and no payment was remitted with the application.

3. The Division of Taxation (Division) received information from the Internal Revenue Service (IRS) indicating that petitioner had a New York address and sufficient income to require the filing of a New York State personal income tax return for tax year 2009. The information received from the IRS indicated that for 2009, petitioner reported adjusted gross income of $96,273.00 and taxable income of $7,893.00.

4. The Division searched its records and determined that petitioner did not file a New York State personal income tax return for the year 2009.

5. By letter dated March 14, 2014, the Division informed petitioner that its records indicated that for 2009 petitioner had filed a federal income tax return, was a New York resident

[1] Petitioner simultaneously filed two separate petitions, one for the tax year 2000 and the other for the tax year 2009, both challenging the same conciliation order. The petition for tax year 2000 was dismissed by Order dated August 25, 2022 (***Matter of Ryan***, Division of Tax Appeals, August 25, 2022). This decision addresses tax year 2009 only.

or nonresident with New York source income and may be required to file a New York State income tax return, but that it had no record that petitioner filed a New York return for that year. The letter requested that petitioner respond within 30 days by either filing a New York State income tax return or explaining why he did not have to file.

6. Petitioner did not respond to the Division's March 14, 2014, letter and on August 21, 2014, the Division issued to petitioner a statement of proposed audit changes (statement). The statement utilized the information received from the IRS and determined that petitioner had New York adjusted gross income of $96,273.00, applied a New York standard deduction and asserted tax due of $5,683.00.

7. On September 8, 2014, petitioner responded to the statement indicating his disagreement with the amount due and asserting that he was a resident of Florida for 2009. Petitioner did not include any other documentation with his correspondence.

8. The Division sent correspondence to petitioner, dated December 19, 2014, requesting that he provide documentation to support his claim that he was a full-year resident of another state in 2009 and include a copy of the income tax return he filed with the other state. The correspondence further requested that if petitioner was a part-year resident of another state, he show the period of residence in New York. The correspondence further stated that if petitioner did file a 2009 New York State income tax return, he must provide a complete copy, including wage and tax statements.

9. On January 14, 2015, the Division issued to petitioner a notice of deficiency (assessment ID number L-041800571), asserting tax in the amount of $5,683.00, plus interest and penalties for the tax year 2009.

10. The Division issued to petitioner a notice and demand (assessment ID number L-041800571) for tax year 2009, on May 1, 2015.

11. Petitioner responded to the notice and demand by correspondence, dated June 24, 2015, disputing the tax determined due for 2009 and claiming that he filed an amended return carrying losses he had in 2010. Petitioner did not include a copy of an amended return with the correspondence. Additionally, no amended resident income tax return for 2009 was introduced into the record.

12. On or about July 9, 2018, petitioner sent the Division a copy of his U.S. Individual Income Tax Return, form 1040, for 2009 (2009 federal return), with a filing status of married filing separately. Petitioner reported a home address in Troy, New York on the 2009 federal return and reported wage and salary income of $96,273.00. Attached to the 2009 federal return, among other items, was a form 1099-MISC, miscellaneous income, reporting nonemployee compensation to petitioner from Alex S. Joseph Associates, Inc., with an address in Dewitt, New York, in the amount of $7,024.52 and a form 1099-MISC, miscellaneous income, reporting nonemployee compensation to petitioner from Prime Rate and Return, LLC, with an address in Troy, New York, reporting nonemployee compensation in the amount of $80,000.00.

13. Petitioner filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS) on September 30, 2020, seeking review of the notices for the tax years 2000 and 2009.

14. On December 11, 2020, BCMS issued a conciliation order dismissing the request. The conciliation order determined that petitioner's protest of notices bearing assessment numbers L-020421479 and L-041800571 was untimely.

15. In response to the petitions filed on December 31, 2020 (***see*** finding of fact 1), the Division filed its answer on April 14, 2021.

16. Petitioner filed a reply to the Division's answer on April 28, 2021.

17. On March 4, 2022, the Division sought leave to amend its answer by letter to Supervising Administrative Law Judge Herbert M. Friedman, Jr., pursuant to 20 NYCRR 3000.4 (d). A copy of this request was sent to petitioner by certified mail. By letter of March 4, 2022, leave was granted by Supervising Administrative Law Judge Friedman.

18. Petitioner filed a motion, dated April 1, 2022, requesting reconsideration of the granting of leave for the Division to amend its answer. As part of his motion, petitioner also requested that he be granted "a Summary Judgement" [sic] based on the Division's failure to timely respond to his April 28, 2021 reply. Petitioner did not attach an affidavit to his motion. Petitioner further requested that if his motion for reconsideration was denied, he be permitted a 10-month extension in which to reply to the Division's amended answer.

19. The Division opposed petitioner's motion and cross-moved to dismiss the petition or for summary determination on the grounds that the Division of Tax Appeals lacks subject matter jurisdiction over the petition with regard to the tax year 2000 and that the pleadings failed to state a claim for relief for the tax year 2009.

20. The Division did not offer proof of mailing for the 2009 notice of deficiency (assessment ID number L-041800571).

21. By order dated August 25, 2022, the Division of Tax Appeals denied petitioner's motions for reconsideration of granting leave for the Division to amend its answer and for summary determination, granted the Division's cross-motion to dismiss with regard to the notice and demand for tax year 2000 (assessment ID number L-020421479), sustained the conciliation

order dated December 11, 2020 for that notice and denied the Division's cross-motion for summary determination with regard to the notice of deficiency (assessment ID number L-041800571) for tax year 2009 (***see*** finding of fact 1). A hearing for tax year 2009 was subsequently held on January 5, 2023.

22. During the hearing in this matter, petitioner introduced a final judgment and decree of divorce, dated October 31, 2013, in the ***Matter of E. Colleen Ryan against Matthew J. Ryan*** (Sup Ct, Rensselaer County), an Order, dated August 17, 2011 and a Joint Stipulation and Proposed Order, filed August 17, 2011 in ***Securities and Exchange Commission v Matthew John Ryan and Prime Rate and Return, LLC, individually and d/b/a American Integrity Financial Co.***, (1:10-CV-513 NAM/RFT, 2015 [NDNY Aug. 17, 2011]).

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

Before addressing the substantive issues herein, the Administrative Law Judge first considered the question of jurisdiction. Concluding that the Division did not meet their burden of demonstrating proper mailing of the notice of deficiency for tax year 2009 (notice), the presumption of receipt by petitioner did not arise. Upon determining that the assessment issued on January 14, 2015 was not time-barred by operation of the period of limitation for issuance, the time for filing a protest against the notice is triggered by the date that petitioner's actual receipt is established. The Administrative Law Judge deemed petitioner's receipt of the notice to have occurred no later than when petitioner filed a request for a conciliation conference. Accordingly, the protest was deemed timely and jurisdiction was established.

Addressing the dispute between the parties, the Administrative Law Judge began by pointing out that notices are presumed correct and that the burden of proof is upon petitioner to establish that notices are erroneous. Here, the finding was that the notice was essentially based

upon information received from the IRS indicating petitioner had New York source income, a New York address for petitioner and a determination that petitioner had not filed a New York State tax return. The Administrative Law Judge also determined that the Division commenced an audit on March 14, 2014 by requesting either a copy of a filed state tax return or documentation to address petitioner's failure to file a return and that petitioner failed to supply any documentation in response to that request.

The deficiency was determined by ascribing the gross income associated with New York sources, allowing a standard deduction in accordance with petitioner's federally reported filing status and applying interest and penalties. Reviewing the entire record, including all testimony and documents introduced by petitioner, a 2009 federal tax return, the final judgment and decree of divorce and joint stipulations and proposed orders associated with federal Securities and Exchange actions, the Administrative Law Judge found that it contained "no evidence to dispute the Division's determination regarding [petitioner's] taxable income." The Administrative Law Judge found that petitioner offered no evidence that he filed a 2009 NYS income tax return, thus failing to support his assertion that a federal receiver verified the filing of the same, or that the Division was barred from issuing a notice directly to him. Further, the Administrative Law Judge found that petitioner's claims were directly contradicted by the decision in ***SEC v Ryan*** (1:10-CV-513 NAM/RFT, 2015 WL 5177635 [NDNY Sept. 4, 2015]), which indicated that a receiver was appointed over Prime Rate and Return, LLC, on May 3, 2010 and that on October 18, 2013, the Court discharged the receiver, a date prior to the commencement of the audit and issuance of the notice.

Upon review of the entire record, the Administrative Law Judge held that the failure of petitioner to supply documentation in support of his claims meant that the Division could use

information in its possession to estimate petitioner's income tax liability and, in view of petitioner's failure to meet the burden of proving that the estimates were erroneous, petitioner's arguments were "meritless." Accordingly, the Administrative Law judge denied the petition and sustained the notice.

ARGUMENTS ON EXCEPTION

At the hearing, petitioner made numerous claims, including that he was a resident of Florida for the period in question, that the estimation of his New York income was incorrect, that he did not owe New York taxes because a federal receiver did not file a form 1099, that he timely filed a New York income tax return for the year in issue or it was filed on his behalf by a federal receiver and that the Division violated an asset freeze and failed to file a "required" motion to contact petitioner.

On exception, petitioner argues that the Division "failed to produce the filing of [his] tax return for 2009," which, he asserts, would show "income to other people where there was a loss of income in total for [petitioner] including other deductions allowed." Petitioner also claims that the Division is obligated to accept a settlement allegedly made with the IRS as the basis for the determination of any state tax due and that Division must also accept the "full deduction presented with the taxes filed." Petitioner also claimed that the Division "never fully presented the full calculation of monies owed after deduction."

The Division asserts that the finding of the Administrative Law Judge is correct in all respects; that petitioner was required to file a New York State income tax return for the period in issue and failed to establish that he did so file or that petitioner established any basis upon which a determination could be made that he was not required to do so. The Division also asserts that determinations of tax made by the Division are presumed correct, that the burden is upon

petitioner to demonstrate that such determinations are erroneous and that petitioner failed to offer any proof to contradict the notices. The Division also claims that information provided by petitioner established that all of his federally reported income was taxable in New York for the year in question and that he failed to support any modifications to federal income that would reduce that amount.

The Division also claims that allegations asserted by petitioner on exception, as below at the administrative hearing, remain unsupported by evidence and that the determination of the Administrative Law Judge should be affirmed and the notice sustained.

OPINION

We start with the presumption of correctness that attaches to notices issued by the Division. It is incumbent upon petitioner to establish that such notices are erroneous (Tax Law § 689 [e]; 20 NYCRR 3000.15 [d] [5]; ***see also Matter of Leogrande v Tax Appeals Trib.***, 187 AD2d 768 [3d Dept 1992], ***lv denied*** 81 NY2d 704 [1993]). That is, petitioner is obliged to produce documents and other evidence that refute, rather than simply disagree with the findings of the Division (***Matter of Scarpulla v State Tax Commn.***, 120 AD2d 842 [1986]). Nor is the Division obligated to accept that which is offered by petitioner (***id.*** at 843). Here, the Division offered proof that the State of New York had no state income tax return on file for petitioner for the year in question. Petitioner offered different theories below including that a federal receiver was obligated to file such a return, that the receiver did indeed file a return and petitioner himself filed the return and that no return was required to be filed (***see e.g.*** findings of fact, 7, 11 and 12). Nothing in the record supports any of petitioner's claims, thus we conclude petitioner did not file a return and none was filed on his behalf.

When a return is not filed, the Division has the authority to use what it has available to determine tax due, if any, provided it has a rational basis (Tax Law 681 [a]; ***Matter of Mayo***, Tax Appeals Tribunal, March 9, 2017). Here, the Division used the information provided by the IRS derived from petitioner's federal income tax return. That information showed a New York address for petitioner, as did a document petitioner filed in 2010 seeking an extension for the filing of his 2009 state income tax return (***see*** findings of fact 2, 3). Further, the federal information showed 1099 income from multiple New York sources to petitioner for the tax year in question (***see*** finding of fact 3, 12). Based upon that information and allowing standard deductions, the Division determined petitioner's New York income and tax due.

Additionally, on numerous occasions, the Division sought to verify or to give petitioner an opportunity to refute the information. First, when it sent petitioner a letter on March 14, 2014 indicating its findings and requesting additional information, petitioner did not respond (***see*** findings of fact 5, 6). Next, a statement of audit changes was issued on August 21, 2014 to which petitioner responded on September 8, 2014 that he was a resident of Florida but did not offer any substantiation to refute the findings included in the statement. On December 19, 2014, the Division wrote to petitioner seeking proof that he was a non-resident (a return filed with another state) and again requesting a copy of his New York state income tax return, along with other information. The record does not show a response to that inquiry and subsequently, on January 14, 2015, the notice herein was issued.

That notice was followed by the issuance of a notice and demand on May 1, 2015, to which petitioner responded on June 24, 2015 asserting losses for a subsequent tax year, claiming to have filed a return for 2009 and stating his disagreement with the audit findings and notices. However, petitioner included neither a state income tax return nor an amended return for the

period in issue. In July of 2018, petitioner forwarded a copy of his federal income tax return and two forms 1099 indicating income to petitioner from two New York sources (***see*** finding of fact 12). That return also showed an address for petitioner in Troy, New York. Despite numerous and repeated opportunities to do so, petitioner did not produce a New York state income tax return for the period in issue and likewise offered no proof that he was a nonresident or did not owe taxes on his New York source income. Mere assertions are not enough to overcome the presumption of correctness that attaches to the Division's notices (***Matter of Marcinek***, Tax Appeals Tribunal, August 13, 2009, citing ***Matter of Atlantic & Hudson Ltd. Partnership***, Tax Appeals Tribunal, January 30, 1992). Indeed, the information that was available to the Division, including some of the documentation provided by petitioner himself supports their findings. Contrary to petitioner's argument, it is his burden, not the Division's to substantiate adjustments to income (***see*** Tax Law § 689 [e]; ***see also Matter of Leogrande***). Here, petitioner has utterly and completely failed to do so.

We will not add to the discussion about whether the Division was prohibited from contacting petitioner directly any more than to point out that the record does not reflect any such prohibition. Even if a restriction existed under law, and we do not find that to be so, the receiver in this instance was relieved of duty prior to the first contact the Division sought with petitioner.

We turn now to petitioner's arguments regarding a purported settlement with the IRS regarding his federal tax liability for the year in issue. First, except for petitioner's assertion, the record is devoid of details concerning a settlement. Even if the record included such details, the Division is not bound by federal tax settlements (***Matter of Dufton and Conlon***, Tax Appeals Tribunal, April 6, 1995) and no information is included therefrom that would suggest that petitioner did not have New York source income as determined by the Division, and that he was

entitled to more than a standard deduction or that there was reasonable cause for his failure to file a return or pay the taxes due to the State of New York.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Matthew J. Ryan is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Matthew J. Ryan is denied; and

4. The notice of deficiency dated January 14, 2015 is sustained.

DATED: Albany, New York
April 10, 2025

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner