

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ALEXANDER DISOMMA : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 826204
New York State Personal Income Tax under Article 22 :
of the Tax Law for the Year 2008. :

Petitioner, Alexander DiSomma, 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 year 2008.

On, January 2, 2015 and January 16, 2015, respectively, petitioner, appearing pro se, and the Division of Taxation, by Amanda Hiller, Esq. (Leo Gabovich), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by July 10, 2015, which commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Kevin R. Law, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner has met his burden of proving that the deficiency is erroneous.

FINDINGS OF FACT

1. By letter dated October 24, 2012, the Division of Taxation (Division) advised petitioner, Alexander DiSomma, that information provided by the Internal Revenue Service

indicated that petitioner had filed a federal return for the year 2008 but the Division had not received a New York State return from him for that year.

2. On November 17, 2012, and in response to the October 24, 2012 letter from the Division, petitioner provided a copy of his 2008 New York State IT-201 return, which he claimed had previously been filed. The return reported wages of \$53,432.00 and claimed \$16,500.00 of itemized deductions. New York State tax of \$2,266.00 was reported and \$0.00 was reported due after claiming \$2,266.00 of withholding.

3. The New York itemized deductions claimed on petitioner's return consisted of the following:

Medical Expenses	\$ 500.00
Charitable contributions	\$6,000.00
Casualty and theft losses	\$ 500.00
Job expenses	\$5,000.00
Other miscellaneous deductions	\$2,800.00
College tuition itemized deduction	\$1,700.00

4. By letter dated January 15, 2013, the Division acknowledged receipt of petitioner's return but requested a copy of petitioner's federal schedule A and documentation substantiating the itemized deductions claimed thereon. The Division also requested a copy of petitioner's form W-2 in order to substantiate the withholding amount claimed on the return.

5. On March 4, 2013, petitioner faxed a copy of his 2008 New York State IT-201 return along with a copy of form W-2 issued by petitioner's employer, the Metropolitan Transportation Authority and a copy of a his 2008 federal Schedule A. This return was somewhat different from

the copy provided on November 17, 2012 because petitioner reported a taxable refund of state and local taxes in the amount of \$2,266 on line 4 of the return, which was later backed out as a New York subtraction on lines 25 and 32 of said return. The itemized deductions claimed on this copy of petitioner's return differed as well and consisted of the following:

Medical Expenses	\$ 500.00
Taxes	\$3,872.00
Charitable contributions	\$ 500.00
Casualty and theft losses	\$ 500.00
Job expenses	\$6,076.00
Other miscellaneous deductions	\$5,090.00

6. No receipts or cancelled checks were provided to substantiate the itemized deductions claimed. Included with the March 4, 2013 correspondence was a typewritten statement, presumably prepared by petitioner, that offered an explanation of the itemized deductions claimed. This document states that petitioner paid for continuing education and for uniforms, which petitioner is required to wear in the course of his employment. In addition the document states that petitioner donated \$500.00 to the United Way during 2008.

7. On October 8, 2013, the Division issued a Notice of Deficiency to petitioner, which asserted tax of \$616.00 plus late filing penalty and interest.¹ The tax asserted was computed using the wage amount reported on the wage and tax statement, and the standard deduction was allowed. The itemized deductions claimed by petitioner were disallowed for lack of substantiation.

¹Only the first page and the mailing cover sheet of the Notice of Deficiency is in the record. Other documents submitted by the Division establish the basis for the deficiency, including the specific amounts thereof.

8. A conciliation order dismissing request was issued on March 7, 2014 dismissing petitioner's request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services. Thereafter a timely petition was filed with the Division of Tax Appeals.

9. The parties waived a hearing and agreed to have the matter determined on the submission of documents and briefs. The Division, pursuant to an extension, filed documents on April 10, 2015.² Petitioner did not submit any documents in support of his petition. Neither party filed a brief.

CONCLUSIONS OF LAW

A. A properly issued notice of deficiency carries with it a presumption of correctness. The burden of proving that the deficiency is erroneous or improper lies with the petitioner. In this case petitioner submitted neither documents nor a brief to contest the deficiency. "The petitioner, through his complete failure to present any proof as to the incorrectness of the notice of deficiency, has surrendered to the statutory presumption of correctness and the determination must be sustained" (*Matter of Tavolacci v. State Tax Commn.*, 77 AD2d 759, 760 [3d Dept, 1980]). In this case, the notice of deficiency was issued disallowing the itemized deductions claimed on petitioner's 2008 personal income tax return. Although petitioner claimed he timely filed such return, he tendered no evidence during the audit nor during this proceeding to establish that the return had been filed prior to November 17, 2012, the date petitioner first responded to the Division's request for a return. Likewise, petitioner has failed to provide any evidence establishing that the Division's disallowance of the itemized deductions was in error. The record

²In its answer to the petition, the Division originally raised timeliness as an issue, but did not file a motion for summary determination or submit any documents as to the timeliness of petitioner's request for conciliation conference. Accordingly, this defense has been waived and this determination only addresses the underlying merits of the deficiency.

is devoid of any evidence that petitioner actually incurred any of the itemized deductions claimed. The likelihood that petitioner actually incurred any these expenses is called into question by the differing copies of the 2008 IT-201 return petitioner forwarded to the Division during the course of the audit. In sum, petitioner has failed to meet his burden of proving that his 2008 return was timely filed or that he is entitled to the itemized deductions claimed thereon.

B. The petition of Alexander DiSomma is denied and the October 8, 2013 Notice of Deficiency is sustained.

DATED: Albany, New York
November 25, 2015

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE