

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
CHIJOKE AJOKU : DETERMINATION
 : DTA NO. 826275
 :
for Redetermination of a Deficiency or for Refund of New
York State and City Personal Income Tax under Article 22 :
of the Tax Law and the Administrative Code for City of
New York for the Year 2002. :

Petitioner, Chijioke Ajoku, filed a petition for redetermination of a deficiency or for refund of New York State and City personal income tax under article 22 of the Tax Law and the Administrative Code for the City of New York for the year 2002.

A hearing was held on May 1, 2015 in New York, New York, at 11:00 A.M., with all briefs to be submitted by August 24, 2015, which date began the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation, appeared by Amanda Hiller, Esq. (Tobias A. Lake, Esq., of counsel). After due consideration of the documents and arguments submitted, Donna M. Gardiner, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly determined petitioner's tax liability for the year 2002.

FINDINGS OF FACT

1. Petitioner, Chijioke Ajoku, is a resident of New York City and was during the tax year

in question, 2002. Petitioner's form IT-201, New York State Resident Income Tax Return, for tax year 2002 indicated that he was due a refund in the amount of \$1,409.00. During 2002, petitioner received income from Wintonclyff Protective Services, Cognisa Security, Inc., Argenbright Security, Inc., and Alphastaff Systems, Inc. Petitioner's New York State income tax return was dated April 15, 2003 and was prepared by Mac Panther Agency located in Jamaica, New York. Despite his status as a New York City resident, his form IT-201 did not report any New York City taxes as due.

2. Petitioner was audited by the Division of Taxation (Division) as a result of information obtained by the Internal Revenue Service that indicated that petitioner filed his United States individual income tax return using a New York City address and that he received sufficient income to require the filing of a New York personal income tax return for the year 2002.

3. The auditor conducted a search of the Division's files and records and was unable to locate a personal income tax return filed by petitioner for the tax year 2002 until the year 2013. Despite petitioner's form IT-201 bearing a date of April 15, 2003, the Division claims that it was not received by it prior to April of 2013.

4. The Division audited petitioner's 2002 return and determined that he owed additional tax. The auditor calculated petitioner's New York State and City income tax liabilities by using the amounts contained on his 2002 federal form 1040 income tax return and his federal wage reporting information as well as New York State wage reporting information.

5. The Division issued a Statement of Proposed Audit Changes to petitioner dated February 27, 2014 that calculated petitioner's total gross income in the amount of \$45,565.00, his adjusted gross income (AGI) in the amount of \$45,322.00 and calculated his New York taxable

income in the amount of \$37,299.00. The Division gave petitioner a credit in the amount of New York State income tax withheld in the amount of \$1,569.00 and city tax withheld in the amount of \$961.00. The Division gave petitioner a New York City School Tax Credit in the amount of \$62.50. Therefore, his total New York City withholding amount was \$1,023.50.

6. The Division determined that the New York State income tax due on the taxable amount of \$37,299.00 was \$2,156.00 and the New York City tax liability was \$1,249.00. Therefore, the amounts due to the state and city after the credits for tax withheld left a balance of state income tax due in the amount of \$587.00 and city income in the amount of \$225.50.

7. Petitioner's deductions reported on his Schedule A attached to his federal income tax return reflected that he had paid state and local income taxes in the amount of \$3,562.00. This was also reflected on the form IT-201 as taxes withheld.

8. A Notice of Deficiency, dated April 15, 2014, was issued to petitioner in the amount of \$812.50 plus interest and late payment penalty.

OPINION

A. As the Division correctly notes, determinations made in a notice of deficiency are presumed correct, and the burden of proof is upon petitioner to establish that those determinations are erroneous (*Matter of Leogrande v. Tax Appeals Tribunal*, 187 AD2d 768 [1992], *lv denied* 81 NY2d 704 [1993]). The burden does not rest with the Division to demonstrate the propriety of the deficiency (*Matter of Scarpulla v. State Tax Comm.*, 120 AD2d 842 [1986]).

B. At the hearing, petitioner voiced his frustration in dealing with the Division for a number of years. Petitioner pointed to certain statements made by the Division that he argued

demonstrated that the Division was not forthcoming. For instance, petitioner noted that his 2002 form IT-201 introduced into evidence had two separate facsimile (fax) dates, which indicated that despite the Division's claim that it did not receive his return until April of 2013, his tax return showed that it was sent to the Division by his wife on April 28, 2011 as indicated on the top of his tax return.

In reviewing petitioner's 2002 state return, it is clear that the two fax date stamps were from two separate transmissions and fax machines. The earlier date of April 28, 2011 bears his wife's name and fax number. It also indicates that the document faxed was four pages in length of which pages two through four are part of Exhibit F. However, the Division's fax date-stamp indicates that it was received by NYSDTF on April 29, 2013 and that the document was eight pages in length. The appearance of petitioner's wife's name and their fax number does not indicate that it was sent by her to NYSDTF on that date; it could represent receipt by her on that date at that fax number. Therefore, with no other evidence presented, it cannot be determined that this tax return was received prior to 2013.

C. Petitioner also claims that more than enough money was withheld by his employers for his tax liability and, thus, he does not owe any further amount for 2002. Petitioner argues that any mistakes made were simply that - mistakes. He states emphatically that at no time has he tried to hide any income from taxation.

Pursuant to Tax Law § 689(e), the burden of proof is upon petitioner to show, by clear and convincing evidence, that the notice is erroneous. Petitioner has not demonstrated any error made by the Division in calculating his tax liability for the year 2002.

D. The petition of Chijioke Ajoku is denied and the Notice of Deficiency,
L-040794909, dated April 15, 2014 is sustained.

DATED: Albany, New York
February 25, 2016

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE