

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
SANDRA M. KIM	:	DETERMINATION
for Redetermination of Deficiencies or for Refund of	:	DTA NOS. 828183
New York State Personal Income Taxes under Article 22	:	AND 828184
of the Tax Law and the Administrative Code of the City	:	
of New York for the Years 2012 and 2013.	:	

Petitioner, Sandra M. Kim, filed petitions for redetermination of deficiencies or for refund of New York State personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2012 and 2013.

On October 21, 2019, petitioner, appearing pro se,¹ and on October 23, 2019, the Division of Taxation, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), waived a hearing and submitted the matter for determination pursuant to 20 NYCRR 3000.12 based on documents and briefs to be submitted by May 4, 2020, which date began the six-month period for issuance of this determination. 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 personal income taxes for the years 2012 and 2013.

¹ Although petitioner was represented at the time she filed her petition, she terminated authorization for her former representative to appear on her behalf, effective September 11, 2019.

FINDINGS OF FACT

1. Pursuant to an exchange of information agreement between the Division of Taxation (Division) and the Internal Revenue Service (IRS), the Division determined that petitioner, Sandra M. Kim, filed her Federal income tax returns, forms 1040, for the tax years 2012 and 2013 reporting a New York State address. The IRS provided the Division with the information reported on petitioner's 2012 and 2013 Federal income tax returns.

2. Petitioner failed to file New York income tax returns for the years 2012 and 2013.

3. The address that petitioner reported on her Federal income tax returns was a New York, New York, address. On September 13, 2016, the Division sent correspondence to petitioner to inform her that according to its records, petitioner was a licensed professional with earned income taxable to New York and that no income tax returns on her behalf were received by the Division for the tax years 2012 and 2013. The correspondence directed petitioner to file the missing returns within 30 days or provide proof that such returns were filed.

4. After petitioner failed to respond, the Division issued a separate statement of proposed audit changes for each year, dated February 3, 2017. Information from her Federal income tax returns was used to determine her adjusted gross income for the years 2012 and 2013, in conjunction with her form 1099s. Additions were made to petitioner's Federal adjusted gross income for interest income of New York State and local obligations and employee 414 (h) contributions.

5. The Division issued a notice of deficiency (notice) to petitioner, bearing assessment identification #L-046037213, dated March 22, 2017, for personal income taxes due as a domiciliary of New York State and City for the tax year 2012.

6. The Division issued a notice, bearing assessment identification #L-046037214, dated March 22, 2017, for personal income taxes due as a domiciliary of New York State and City for the tax year 2013.

7. Petitioner filed timely petitions with the Division of Tax Appeals on May 2, 2017. In her petition, petitioner asserts that she plans to file or has filed original returns and that she intends to pursue a payment plan once her returns are processed.

8. Petitioner failed to submit any documents in support of her petitions. Additionally, petitioner chose not to file any briefs in this matter.

CONCLUSIONS OF LAW

A. Tax Law § 651 (a) (1) provides, in pertinent part, as follows:

“(a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, an income tax return under this article shall be made and filed by or for:

(1) every resident individual (A) required to file a federal income tax return for the taxable year, or (B) having federal adjusted gross income for the taxable year, increased by the modifications under subsection (b) of section six hundred twelve, in excess of four thousand dollars, or in excess of his New York standard deduction, if lower, or (C) subject to tax under section six hundred two, or (D) having received during the taxable year a lump-sum distribution any portion of which is subject to tax under section six hundred three. . . .”

Generally, New York income tax must be assessed within three years of the date of filing of the return (*see* Tax Law § 683 [a]). If no return is filed, however, then the tax may be assessed at any time (*see* Tax Law § 683 [c] [1] [A]).

B. Tax Law § 681 (a) provides, in pertinent part, as follows:

“If upon examination of a taxpayer’s return under this article the tax commission determines that there is a deficiency of income tax, it may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the

taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer.”

C. The Division commenced its audit of petitioner in 2016 after a review of its records failed to disclose any New York State income tax returns for the years 2012 and 2013. The Division made a written request on September 13, 2016, to petitioner for documentation to address the issue of her failure to file her personal income tax returns for the years at issue. Petitioner failed to supply any documentation. Thus, the Division was authorized to estimate petitioner's personal income tax liability “from any information in its possession” (Tax Law § 681 [a]; *see Lysek v Commissioner of Internal Rev.*, 34 TCM 1267 [1975], *affd* 583 F2d 1088 [9th Cir 1978]). Here, the Division had in its possession information from the IRS that petitioner reported on her Federal income tax returns for 2012 and 2013. Pursuant to Tax Law § 681 (a), the Division was authorized to use this information to estimate petitioner's personal income tax liability for the years at issue.

D. Where, as here, the Division properly issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to such notice (*see Matter of Land Transp. Corp.*, Tax Appeals Tribunal, June 29, 2000; *Matter of Atlantic & Hudson Ltd. Partnership*, Tax Appeals Tribunal, January 30, 1992). In proceedings for review of a properly issued notice of deficiency, the burden of proof is on the taxpayer to demonstrate that the deficiency is erroneous (*see* Tax Law § 689 [e]).

As noted in the findings of fact above, petitioner failed to introduce any documentation in support of her petition and failed to submit any briefs. Accordingly, petitioner has not sustained her burden of proof to show that the notices issued to her were erroneous.

E. The petitions of Sandra M. Kim are denied and the notices of deficiency, dated March 22, 2017, are sustained.

DATED: Albany, New York
October 29, 2020

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE