

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition
of
DENNIS A. RHODES
for Redetermination of a Deficiency or for Refund of
New York State and New York City Personal Income
Taxes under Article 22 of the Tax Law and the New
York City Administrative Code for the Year 2015.

DETERMINATION
DTA NO. 829299

Petitioner, Dennis A. Rhodes, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the New York City Administrative Code for the year 2015.

On January 21, 2020, the Division of Taxation, appearing by its representative, Amanda Hiller, Esq. (Michael Trajbar, Esq., of counsel), brought a motion seeking an order dismissing the petition, or in the alternative, summary determination in the above-referenced matter pursuant to 20 NYCRR 3000.5, 3000.9 (a), and 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, had 30 days within which to respond to the Division’s motion, but did not do so, and thus the 90-day period for issuance of this determination commenced on February 21, 2020.

Based upon the Division’s motion papers, the affidavit of Michael Trajbar, Esq., dated January 21, 2020, and accompanying exhibits submitted therewith, and all pleadings, proceedings and documents submitted in connection with this matter, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUE

Whether the petition filed in this matter must be dismissed pursuant to Tax Law § 173-a.

FINDINGS OF FACT

1. On or about April 11, 2016, petitioner, Dennis A. Rhodes, filed a New York State resident income tax return (form IT-201) for the year 2015, on which he reported federal adjusted gross income in the amount of \$85,136.00, consisting of wages, salaries, tips, etc., in the amount of \$83,534.00 plus taxable refunds, credits or offsets of state and local income taxes in the amount of \$1,602.00.

2. After reducing his federal adjusted gross income by the foregoing state and local taxes (\$1,602.00), and by claimed itemized deductions (\$36,598.00), petitioner arrived at New York taxable income of \$46,936.00, with New York State (\$2,691.00) and New York City (\$1,595.00) taxes due thereon. Petitioner reduced his \$4,286.00 total New York tax liability by the \$6,839.00 total reported amounts of New York State (\$3,952.00) and New York City (\$2,824.00) tax withheld, resulting in a claimed \$2,553.00 overpayment to be refunded to him.

3. By a December 31, 2018 notice of additional tax due (L-049325202), the Division of Taxation (Division) notified petitioner that his federal adjusted gross income, as reported on form IT-201, was being increased based upon information provided to it by the Internal Revenue Service (IRS). Specifically, the Division's December 31, 2018 notice advised petitioner that on May 8, 2017, the IRS notified the Division of a change to petitioner's 2015 federal income tax return reflecting inclusion thereon of a lump sum pension or annuity distribution in the amount of \$58,540.00. The Division's notice further advised that such change had not been reported by petitioner to New York State, as required.

4. The computation and explanation sections of the Division's notice reflect and advise

that as a computational consequence of the foregoing, petitioner's federal adjusted gross income was increased to \$143,676.00, and was in turn reduced (as above) by taxable refunds, credits or offsets of state and local income taxes (\$1,602) to \$142,074.00. Petitioner's itemized deduction amount was also reduced from \$36,598.00 to \$27,794.00, thus leaving New York taxable income of \$114,100.00. The foregoing adjustments in turn resulted in increased amounts of New York State (\$7,448.00) and New York City (\$4,044.00) tax liability. This resulting increased total New York liability (\$11,492.00) was reduced by the previously reported New York State (\$2,691.00) and New York City (\$1,595.00) amounts of tax withheld, leaving additional tax due in the amount of \$7,206.00.

5. The Division's notice of additional tax due reflects the assessment of \$8,826.00, consisting of tax in the foregoing amount of \$7,206.00, plus interest (calculated to the date of the notice) in the amount of \$1,620.00. The notice advises petitioner to provide either form W-2 or 1099, as applicable, to show any additional tax withheld with regard to the unreported amount of income that is not shown on the Division's notice, or to provide a revised federal form CP2000, if issued by the IRS, to reflect any changes not shown on the Division's notice.

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 hearing is specifically provided for, modified or denied by another provision of this chapter” (emphasis added.)

B. Tax Law § 659 provides that where a taxpayer's federal taxable income is changed or corrected by the IRS, the taxpayer must report such change or correction to the Division within 90 days after the final determination of such change or correction, and either concede the

accuracy of the federal change or state the taxpayer's basis for asserting that the change or correction is erroneous. If a federal change or correction is not reported within the 90-day period, the Division is authorized by Tax Law § 681 (e) to issue a notice of additional tax due. Furthermore, where a taxpayer fails to report a federal change or correction as required, such a notice may be issued at any time (*see* Tax Law § 683 [c] [1] [C]).

C. Tax Law § 173-a (as added by L 2004, ch 60, § 8, 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 of additional tax due.

D. On December 31, 2018, the Division issued to petitioner a notice of additional tax due based upon petitioner's failure to have reported a federal change to New York State for the year 2015 (*see* findings of fact 3 through 5). While the petition in this matter sets forth certain substantive issues, there is no factual allegation that petitioner reported the federal change upon which the notice of additional tax due is premised to the Division, as required pursuant to Tax Law § 659. Tax Law § 173-a applies to notices of additional tax due issued on or after December 1, 2004. Such provision specifically denies entitlement to a hearing before the Division of Tax Appeals on the merits of a notice of additional tax due and thus serves, as a matter of law, to preclude petitioner from obtaining such a hearing with respect to the subject notice of additional tax due that was issued on December 31, 2018.

E. The petition of Dennis A. Rhodes is hereby dismissed.¹

DATED: Albany, New York
May 21, 2020

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE

¹ Petitioner may not be entirely without recourse in this matter. That is, petitioner may pay the disputed amount of tax sought by the Division via the notice of additional tax due and thereafter may file a claim for refund. If such claim for refund is denied, petitioner may then proceed with a timely petition for a hearing to contest the refund denial.