

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
	:	
LEV AND ANNA PAUKMAN	:	DETERMINATION
	:	DTA NO. 830332
for Redetermination of a Deficiency or for Refund of New	:	
York State and New York City Personal Income Tax under	:	
Article 22 of the Tax Law and the Administrative Code of the	:	
City of New York for the Year 2007.	:	

Petitioners, Lev and Anna Paukman, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2007.¹

A formal hearing by videoconference was held before Barbara J. Russo, Administrative Law Judge, on March 22, 2023, at 10:30 a.m., with the final brief to be submitted by August 10, 2023, which date began the six-month period for the issuance of this determination. Petitioners appeared by Steven R. Borochoy, CPA. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUE

Whether petitioners have met their burden of proving that the notice of deficiency issued by the Division of Taxation for the year 2007 was erroneous.

¹ The petition protested tax years 2007 through 2011. The petition was severed and assigned separate DTA numbers. DTA number 830332 addresses the tax year 2007 only.

FINDINGS OF FACT

1. Petitioners, Lev and Anna Paukman, filed a New York State personal income tax return, form IT-201, for the year 2007, dated February 19, 2010 (2007 return). The 2007 return reported federal adjusted gross income of \$1,159,028.00 and tax due of \$69,623.00.

2. Petitioners subsequently filed an amended New York State personal income tax return, form IT-201-X, dated July 29, 2010 (amended return). The amended return reported federal adjusted gross income of \$755,347.00 and tax due of \$26,907.00.

3. The Division of Taxation (Division) received information from the Internal Revenue Service (IRS) pursuant to the disclosure provisions of Internal Revenue Code (IRC) (26 USC) § 6103 (d), informing it that petitioners' federal adjusted gross income for 2007 was \$1,159,028.00, rather than the amount reported by petitioners on their amended return.

4. The Division issued a notice of deficiency, dated February 23, 2011, to petitioners for tax year 2007, asserting tax due of \$93,827.79, plus interest and penalty (notice). The Division calculated the amount of tax due based on the information received from the IRS indicating petitioners had federal adjusted gross income of \$1,159,028.00 for tax year 2007.

5. Petitioners filed a petition on October 1, 2019, protesting the notice.

6. Petitioners did not present any testimony or exhibits during the hearing in this matter. Petitioners requested and were granted additional time after the hearing to submit a Revenue Agent Report for 2007, but did not submit one within the time allowed.

CONCLUSIONS OF LAW

A. Determinations of tax due made by the Division in a notice of deficiency are presumed correct, and the burden of proof is upon petitioner to establish that the determination is erroneous (*Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also* Tax Law § 689 [e]). The burden does not rest with the Division to

demonstrate the propriety of the deficiency (*see Matter of Scarpulla v State Tax Commn.*, 120 AD2d 842 [3d Dept 1986]).

B. Pursuant to Tax Law § 612 (a), “[t]he New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year.” The Division received information from the IRS indicating that petitioners’ federal adjusted gross income for tax year 2007 was \$1,159,028.00. Upon review of petitioners’ 2007 amended return, the Division determined that their federal adjusted gross income was higher than the amount reported.

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.”

Based on the information received from the IRS, the Division calculated additional tax due and issued the notice to petitioners for 2007.

C. Petitioners have not contended that the information provided to the Division from the IRS regarding their 2007 federal adjusted gross income was incorrect, nor did petitioners provide a copy of their 2007 federal return or any testimony or evidence to show that the Division’s calculation of tax due was incorrect. As such, petitioners have failed to meet their burden of proof.

D. The petition of Lev and Anna Paukman is denied and the notice of deficiency, dated February 23, 2011, is sustained.

DATED: Albany, New York
January 04, 2024

Barbara J. Russo
ADMINISTRATIVE LAW JUDGE