

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
EUNPA CHAE	:	ORDER
	:	DTA NO. 829928
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 2015.	:	

Petitioner, Eunpa Chae, 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 2015.

A small claims hearing was scheduled before Presiding Officer Juan Cartagena in New York, New York, on Thursday, February 2, 2023, at 11:00 a.m. Petitioner failed to appear and a default determination was duly issued on April 20, 2023.

Petitioner, appearing pro se, has made a written application, filed on May 11, 2023, that the default determination be vacated pursuant to 20 NYCRR 3000.13 (d) (3). The Division of Taxation, by its representative, Amanda Hiller, Esq. (Maria Matos, Esq., of counsel), filed a response by June 12, 2023, which date commenced the 90-day period for the issuance of this order.

Based upon a review of the entire case file in this matter, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following order.

ISSUE

Whether the default determination issued in this matter should be vacated.

FINDINGS OF FACT

1. On April 22, 2020, petitioner, Eunpa Chae, filed a petition with the Division of Tax Appeals protesting a notice of deficiency, assessment number L-049325851, issued to her dated May 8, 2019 (notice). The notice asserted additional New York State personal income tax for the year 2015 in the amount of \$228.00, plus interest.

2. Petitioner listed her address as “70 Harriman Rd, Irvington, NY 10533” on the petition.

3. On or about December 1, 2022, Presiding Officer Juan Cartagena sent a letter to petitioner and to the Division of Taxation (Division) informing them that he was assigned to the matter. In this letter, he also stated that the hearing would be scheduled for Thursday, February 2, 2023, at 11:00 a.m. in New York, New York. Additionally, Presiding Officer Cartagena provided the parties an opportunity to proceed with a virtual hearing using CISCO Webex. Presiding Officer Cartagena requested that petitioner contact the Hearing Support Unit if she wished to proceed with a virtual hearing rather than an in-person hearing. Petitioner did not contact the Hearing Support Unit to request that the in-person hearing be changed to a virtual hearing.

4. On December 27, 2022, a notice of hearing was issued to petitioner at her address listed on the petition that scheduled the small claims hearing in the above-captioned matter for February 2, 2023, at 11:00 a.m. at the NYS Dept. of Public Services, 90 Church Street, 4th Floor, New York, New York, 10007-2919. A copy of the notice of hearing was simultaneously sent to the Division.

5. Petitioner did not respond to the notice of hearing.

6. On Thursday, February 2, 2023, at 11:00 a.m., Presiding Officer Cartagena commenced a small claims hearing as scheduled in the *Matter of Eunpa Chae*. The Division appeared by its representative. Petitioner did not appear at the hearing. Additionally, petitioner did not submit a written request for an adjournment of the hearing. Consequently, the representative of the Division moved that petitioner be held in default.

7. On April 20, 2023, Presiding Officer Cartagena issued a default determination against petitioner, denying the petition in this matter.

8. Petitioner's application to vacate the default determination was filed on May 11, 2023. In her letter, petitioner argues that she is entitled to a resident tax credit for the year 2015. Attached to her letter was a copy of her 2015 New York State personal income tax return and a copy of the default determination issued to her.

9. In its opposition to the instant application, the Division states that petitioner offered no excuse for her failure to appear at the hearing nor did she submit any evidence of a meritorious case.

CONCLUSIONS OF LAW

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules):

“[i]n the event a party or the party's representative does not appear at a scheduled hearing and an adjournment has not been granted, the presiding officer shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear” (20 NYCRR 3000.13 [d] [2]).

The Rules further provide that, “[u]pon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case” (20 NYCRR 3000.13 [d] [3]).

B. Petitioner did not appear at the scheduled hearing or obtain an adjournment.

Therefore, the presiding officer correctly rendered a default determination pursuant to 20 NYCRR 3000.13 (d) (2) (*see Matter of Hotaki*, Tax Appeals Tribunal, December 14, 2006; *Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995).

C. Once the default determination was issued, it was incumbent upon petitioner to show an acceptable excuse for not attending the hearing and that she had a meritorious case (*see* 20 NYCRR 3000.13 [d] [3]; *Matter of Estruch*, Tax Appeals Tribunal, May 20, 2010; *Matter of Zavalla*).

The record shows that Presiding Officer Cartagena's letter dated December 1, 2022, expressly informed petitioner that the hearing would be scheduled for February 2, 2023, unless petitioner opted for a virtual hearing. Petitioner never contacted the Hearing Support Unit to request a virtual hearing instead of an in-person hearing. The notice of hearing was issued to petitioner on December 27, 2022. Petitioner did not offer any excuse for her failure to appear.

D. Furthermore, petitioner has not established a meritorious case. "In order to meet the meritorious case criterion for vacatur, petitioner must make a prima facie showing of legal merit, and may not rely on conclusory statements unsupported by the facts" (*Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015). Petitioner's application only provided a copy of her income tax return for 2015, which does not prove that she has a meritorious case. As a result, petitioner's application fails on this prong as well.

E. The application of Eunpa Chae to vacate the default determination of April 20, 2023, is denied.

DATED: Albany, New York
September 7, 2023

Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE