

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ZHOUCHUAN SUN : ORDER
 : DTA NO. 830060
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, Zhouchuan Sun, 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, March 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 April 28, 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 on May 9, 2023. Thereafter, petitioner filed a sur reply by May 30, 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 September 17, 2020, petitioner, Zhouchuan Sun, filed a petition with the Division of Tax Appeals protesting a conciliation order, CMS No. 000311188, dated June 19, 2020. The conciliation order recomputed a notice of deficiency, assessment number L-049373694^{GDM(1)} that was issued to petitioner that assessed additional New York State personal income tax for the year 2015.

2. Petitioner listed his address as “65 Palmer Ln, Thornwood, NY 10594” in his petition.

3. On or about January 20, 2023, 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 informed the parties that the hearing would be scheduled for Thursday, March 2, 2023, at 11:00 a.m. in New York City. 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 he 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 January 24, 2023, a notice of hearing was issued to petitioner at his address listed on his petition that scheduled the small claims hearing in the above-captioned matter for March 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, March 2, 2023, at 11:00 a.m., Presiding Officer Cartagena commenced a small claims hearing as scheduled in the *Matter of Zhouchuan Sun*. 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 April 28, 2023. In his unsworn letter, petitioner stated that he never received the notice of hearing. Petitioner explained that his mailbox was destroyed by a car accident that happened on February 2, 2023. Attached to his letter was a copy of a police report filed with the Mount Pleasant Police Department that described the damage to his mailbox. Petitioner did not offer any explanation for how the damage to his mailbox prevented him from attending the scheduled hearing. Moreover, petitioner did not offer any evidentiary materials on the substance of his case with his application, but he asserted that he prepared various evidence and supporting documents.

9. In its opposition to the instant application, the Division states that petitioner failed to provide a reasonable excuse for the default. Specifically, the Division points out that petitioner failed to explain how a broken mailbox on February 2, 2023 prevented him from receiving mail before the incident occurred. Presiding Officer Cartagena sent a letter on January 20, 2023, advising of the hearing date and a notice of hearing was mailed on January 24, 2023. Additionally, the Division notes that petitioner failed to submit any evidence of a meritorious case with his application.

10. In response to the Division's reply to his application, petitioner submitted additional documentation that included a copy of an undated email, a schedule E with attachments, a copy of his masters of business administration degree from Duke, among other certifications. The unsworn, cover letter accompanying his submission does not explain how any of his documents support his 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 he had a meritorious case (*see* 20 NYCRR 3000.13 [d] [3]; *Matter of Poindexter*, Tax Appeals Tribunal, September 7, 2006; *Matter of Zavalla*). Petitioner offered his unsworn letter and a copy of the incident report that was filed with the police department. This clearly does not meet his burden of proof.

The record shows that Presiding Officer Cartagena's letter dated January 20, 2023 expressly informed petitioner that the hearing would be scheduled for March 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 January 24, 2023. Petitioner claims that his damaged mailbox prevented him from receiving mail on February 2, 2023, yet he did not provide details on how this impacted his mail delivery or for how long. Therefore, petitioner has not demonstrated an acceptable excuse for his absence at the hearing.

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 consisted of a conclusory, unsworn statement and copies of documents without any context or explanation to support the substance of his case. As a result, petitioner's application fails on this prong as well.

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

DATED: Albany, New York
August 24, 2023

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE