

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
KATE S. BROWN : ORDER
 : DTA NO. 830470
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, Kate S. Brown, 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 formal hearing by videoconference was scheduled before Administrative Law Judge Kevin R. Law on Tuesday, June 20, 2023, at 12:00 p.m. Petitioner failed to appear for the entirety of the hearing, and a default determination was issued on February 22, 2024. On June 6, 2024, petitioner, appearing pro se, filed an application to vacate the default determination.¹ On July 8, 2024, the Division of Taxation, by its representative, Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel), filed a letter in response, 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 petitioner's application to vacate a default determination should be granted.

¹ Although petitioner filed her application with the Division of Tax Appeals on June 6, 2024, she failed to send a copy of her application to the Division of Taxation. Accordingly, the Division of Tax Appeals sent a copy of the application to the Division of Taxation on June 8, 2024.

FINDINGS OF FACT

1. On May 24, 2021, petitioner, Kate S. Brown, filed a petition with the Division of Tax Appeals in protest of a notice of deficiency, assessment number L-052885053, dated March 31, 2021 (notice), that asserted additional New York State personal income tax due for the year 2015. The basis for the subject notice was the Division of Taxation's (Division's) assertion that, according to Federal and State information available, petitioner owed additional income tax in the amount of \$3,057.00, plus penalties and interest. Specifically, the Division did not find any record that petitioner filed a New York State resident income tax return for the year 2015. Thus, the Division used information from petitioner's filed Federal income tax return for 2015 and determined that petitioner had sufficient income to require the filing of a New York State return. The Division computed Federal adjusted gross income in the amount of \$129,706.00. From this amount, the Division allowed a standard deduction in the amount of \$7,900.00, which resulted in taxable income of \$121,806.00, and New York State tax due in the amount of \$7,838.00. The Division credited petitioner \$4,781.00 for New York State tax withheld, which resulted in a remaining balance due of \$3,057.00.²

2. On March 2, 2023, Administrative Law Judge Kevin R. Law held a prehearing conference call with the parties. During this call, the parties opted to proceed with a formal hearing by videoconference scheduled for June 20, 2023.

3. On May 18, 2023, the Division of Tax Appeals issued a notice of hearing that confirmed the formal hearing to commence at 12:00 p.m. on Tuesday, June 20, 2023. The notice of hearing provided the information needed to access the formal hearing.

² Subsequent to the filing of the petition, the Division reviewed documentation submitted by petitioner and reduced the asserted tax due to an amount of \$39.35.

4. On June 20, 2023, Administrative Law Judge Law called the matter of petitioner.

Both parties initially appeared.

5. At the outset of the hearing, there were minor technical difficulties. The parties were having trouble hearing the administrative law judge. However, this issue was resolved. Petitioner initially joined the hearing by cell phone but decided to use the landline phone at her work location. She was experiencing background noise that was affecting her ability to hear the other participants to the hearing. Specifically, petitioner stated: "I work in a hospital that's closing down, and I still can't hear you guys. Hello. I can't hear you guys. This is ridiculous." Petitioner also asserted that her HIPAA (Health Insurance Portability and Accountability Act) rights were violated because the Division of Tax Appeals and the Division of Taxation used her personal email to communicate with her about her petition.

6. Petitioner repeatedly stated that the hearing needed to be rescheduled. Administrative Law Judge Law instructed petitioner to download the Webex application in order to effectively participate in the hearing. She continuously refused to do so and disconnected herself from the proceeding. Administrative Law Judge Law attempted to contact her by telephone twice, yet she did not answer. He then tried to contact her by email, explaining that she was required to rejoin the proceeding, otherwise he would hold her in default for her failure to appear. She did not respond to his emails. The record was then closed.

7. After the hearing concluded, Administrative Law Judge Law allowed time for petitioner to contact the Division of Tax Appeals regarding her departure from the hearing. She failed to contact the Division of Tax Appeals.

8. On February 22, 2024, Administrative Law Judge Law issued a default determination against petitioner that denied the petition.

9. On June 6, 2024, petitioner filed an application to vacate the default order. She alleged that she had a personal matter arise that required her to disconnect from the proceeding. Additionally, she stated that the default should be vacated because she “had to support 5 children with no help.” Petitioner did not submit any proof regarding her failure to participate in the hearing nor any documentation in support 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 administrative law judge 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 3000.15 [b] [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 3000.15 [b] [3]).

B. Petitioner failed to participate in the scheduled hearing or obtain an adjournment. Therefore, the administrative law judge correctly rendered a default determination pursuant to 20 NYCRR 3000.15 (b) (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 3000.15 [b] [3]; *Matter of Poindexter*, Tax Appeals Tribunal, September 7, 2006; *Matter of Zavalla*).

The case file shows that the notice of hearing was issued to the parties on May 18, 2023.

Petitioner alleges that she could not participate in the hearing due to a personal matter. However, she initially refused to download the Webex application and then disconnected. Thereafter, she failed to contact the Division of Tax Appeals after multiple attempts were made to contact her. Her unsworn statement without documentation fails to establish a valid excuse for her failure to participate in 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 failed to include any evidence to meet her burden of establishing a meritorious case. As a result, petitioner’s application fails on this prong as well.

E. The application of petitioner, Kate S. Brown, to vacate the default determination, dated February 22, 2024, is denied.

DATED: Albany, New York
September 26, 2024

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE