STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
MOE D. KARASH AND RUTH (DECEASED) KARASH	:	DECISION DTA Nos. 813653
for Redetermination of Deficiencies or for Refund of Personal Income Tax under Article 22 of the Tax Law and Title 11, Chapter 17 of the New York City Administrative Code for the Years 1991 and 1992.	:	AND 814703
	:	

Petitioners Moe D. Karash and Ruth (deceased) Karash, 70-20 Austin Street, Room 101, Forest Hills, New York 11375, filed an exception to the determination of the Administrative Law Judge issued on July 18, 1996. Petitioners appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Paul A. Lefebvre, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners filed a reply brief. Petitioners' request for oral argument was denied.

Commissioner Jenkins delivered the decision of the Tax Appeals Tribunal. Commissioner DeWitt concurs. Commissioner Pinto took no part in the consideration of this decision.

ISSUE

Whether petitioners properly deducted from their New York adjusted gross income for the years 1991 and 1992 the full amount of their Federal itemized deductions without regard to the limitation placed upon said itemized deductions under Internal Revenue Code § 68(a).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

TAX YEAR 1992

Petitioners timely filed a 1992 New York Resident Income Tax Return, Form IT-201, on or about March 30, 1993. In it, petitioners listed adjusted gross income of $209,645.00, itemized deductions of $65,629.00, yielding taxable income of $144,016.00 and New York State and City of New York tax due thereon of $11,341.00 and $5,965.00, respectively.[1]

Petitioners also filed a United States Income Tax Return for the year 1992, Form 1040, which listed adjusted gross income of $251,518.00 and itemized deductions of $105,566.00. Schedule A attached to the Form 1040, Itemized Deductions, set forth petitioners' deductions for taxes paid, interest paid and gifts to charity. For the year 1992, Schedule A required the taxpayer to perform a computation for limiting the amount of his itemized deductions if the taxpayer's adjusted gross income was more than $105,250.00. Since petitioners' adjusted gross income was in excess of that amount, they were required to perform the computation dictated by item "26" on Schedule A and, as a result, their itemized deductions were limited to $105,566.00. The amount of the deductions before the limitation was $109,954.00.

The 1992 New York Resident Income Tax Return filed by petitioners listed the total itemized deductions from their Federal return for the year 1992 as $109,954.00, even though directed by the New York tax return to set forth the amount stated on Schedule A, line "26", or, $105,566.00. Above that typewritten figure on petitioners' Form 1040, Schedule A, was handwritten the number $109,954.00. To the left of the amounts was written "phased".

By letter, undated, the Division of Taxation ("Division") notified petitioners that their 1992 New York State Resident Income Tax Return had been selected for review and requested that they submit the Schedule A and the Form 1040 within 20 days.

The Division issued a Statement of Proposed Audit Changes to petitioners, dated August 27, 1993, which informed them that they owed additional New York State and City of

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[1]Petitioners gave a gift to wildlife of $50.00 in 1992.

New York taxes of $515.00 plus penalty and interest for the year 1992 because their "itemized deductions [did] not agree with the amounts allowed on [their] federal return."

Subsequently, the Division issued a Notice of Deficiency to petitioners, notice number L-007855472, dated December 20, 1993, which set forth additional New York State and City of New York taxes due for the year 1992 of $515.00 plus interest, for a total amount due of $536.52.

By letter, dated March 3, 1994, the Division informed petitioners that it had reviewed their income tax file for the year 1992 and petitioners' request for a conciliation conference. The letter informed petitioners that they must report the exact amounts reported on their Federal return with regard to itemized deductions, even if the line "26" amount was limited by the Internal Revenue Service. Specifically, the letter said:

> "When computing New York itemized deductions, lines 31 through 39 must be reported exactly as reported on your federal schedule A lines 1 through 26 (even if line 26 is [sic] amount limited by the IRS)."

The letter also gave petitioners the option to withdraw their request for a conciliation conference, which petitioners declined.

A Conciliation Order was issued on December 23, 1994 which denied petitioners' request and sustained the statutory notice in full.

Petitioners believe that they are entitled to claim the full amount of their itemized deductions without subtracting the limitation imposed by the Internal Revenue Service for Federal purposes for the year 1992. Petitioners believe that the New York provision for its own phase out deduction indicated on line "44" of Form IT-201 is the only limitation which should be imposed upon them for the tax year 1992.

The Division contends that the definition of New York itemized deduction found in Tax Law § 615 dictates the amount which must be carried over to the New York return from the Federal Form 1040 as computed on Form 1040, Schedule A.

TAX YEAR 1991

Petitioners timely filed a 1991 Resident Income Tax Return, Form IT-201, on or about

April 8, 1992. In it, petitioners listed adjusted gross income of $332,155.00, itemized deductions of $35,757.00, yielding taxable income of $296,398.00 and New York State and City of New York taxes due thereon of $23,341.00 and $12,762.00, respectively.[2]

For the same tax year, petitioners filed a United States Income Tax Return, Form 1040, which listed adjusted gross income of $365,676.00 and itemized deductions of $86,501.00. The parties did not enter into evidence a copy of the 1991 United States Income Tax Return, but the Division submitted a computer printout from the "Federal income tax system" which set forth all of the information from petitioners' 1991 Federal income tax return. That printout indicated total gross itemized deductions of $94,471.00 (total taxes, interest and contributions), which was subject to a limitation on line "26" of Form 1040, Schedule A, since petitioners' adjusted gross income was in excess of $100,000.00. The limitation, $7,970.00, resulted in net allowable deductions of $86,501.00.

The New York Resident Income Tax Return filed by petitioners listed the itemized deductions from their Federal return for the year 1991 as $94,471.00, even though directed by the New York tax return to set forth the amount of the deduction from Schedule A, line "26", which was listed as $86,501.00.

The Division issued a Pending Statement of Audit Changes, memorialized in evidence by a computer printout which was labeled "DRAFT COPY - FOR INTERNAL USE ONLY". The statement informed petitioners that the Division had recomputed their New York itemized deductions based on information shown on petitioners' 1991 Federal Income Tax Return, Form 1040. The statement noted that, in many cases, the computation of the New York itemized deductions was incorrect because the Federal itemized deductions on line "26" of Form 1040, Schedule A, were carried over incorrectly to line "39" of Form IT-201.

The Division issued a Notice of Deficiency to petitioners, dated November 7, 1994, notice number L-009563574-6, which set forth additional New York State and City of New York taxes due of $737.16 plus penalty and interest, for a total balance due of $969.85.

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[2]Petitioners gave a gift to wildlife of $50.00 in 1991.

On or about November 17, 1994, petitioners requested a conciliation conference in the Bureau of Conciliation Services, which was held on October 12, 1995. A Conciliation Order was issued, dated November 3, 1995, sustaining the statutory notice in full.

As with the year 1992, petitioners believe that they should be entitled to take the full amount of their itemized deductions without the limitation imposed by Internal Revenue Code § 68(a) for the year 1991. Petitioners raise the same argument pertinent to 1992, i.e., that the New York provision for its own itemized deduction adjustment indicated on line "44" of Form IT-201, is the only limitation which should be imposed upon them for the tax year 1991 and that the limit on Federal itemized deductions is only for Federal income tax purposes, not New York State income tax purposes.

The Division, as in the 1992 matter, contends that the definition of New York itemized deduction, found in Tax Law § 615, dictates the amount which must be carried over to the New York return from the Federal Schedule A.

OPINION

Tax Law § 615(a) provides:

> "[t]he New York itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year . . ." (see also, 20 NYCRR former 115.1[a][2]).

For the years 1991 and 1992, Internal Revenue Code ("IRC") § 68(a) provided that the amount of itemized deductions allowable for the taxable year was reduced by the lesser of three percent of adjusted gross income above the applicable amount or 80 percent of the amount of the itemized deductions allowable for the taxable year.

During the years in issue, Federal adjusted gross income was listed on line "31" of the United States Individual Tax Return, Form 1040, and again on line "32." The form listed the deductions to be subtracted from the adjusted gross income on line "34," which yielded the taxable income (except for the amount allowed for exemptions). By specific direction, the deductions included the reductions calculated on Form 1040, Schedule A, and set forth on that

schedule at line "26." Therefore, the amount of the deductions from Federal adjusted gross income is the amount listed on line "34" of the Form 1040, as transferred from line "26" of the Form 1040, Schedule A.

The Administrative Law Judge noted that the Tax Law was clear and unambiguous when it directed taxpayers to use the total amount of deductions from Federal adjusted gross income, other than personal exemptions, as New York itemized deductions. This was the amount listed on the Federal Form 1040, line "34," which included, by incorporation, the limitation on deductions set forth in IRC § 68(a), taken from Form 1040, Schedule A, line "26."

It is an axiom of statutory construction that the legislative intent is to be ascertained from the language used, and that where the words of a statute are clear and unambiguous, they should be literally construed (McKinney's Cons Laws of NY, Book 1, Statutes §§ 76, 94; People v. Munoz, 207 AD2d 418, 615 NYS2d 730, 731, lv denied 84 NY2d 938, 621 NYS2d 535).

Given the clear and unambiguous language of Tax law § 615(a), the Administrative Law Judge concluded that the Federal itemized deductions were to be taken from line "34" of the Form 1040 without modification.

Petitioner argues that it was not the intention of the Legislature to permit the Division to take advantage of the Federal income tax "faze-out" of itemized deductions and then take advantage of the New York State "faze-out" requirement of Tax Law § 615(f).

However, as the Administrative Law Judge noted, petitioner's argument is flawed. Tax Law § 615(f) clearly states:

> "[t]he New York itemized deduction otherwise allowable under this section shall be reduced by the sum of the amounts determined under paragraphs one and two of this subsection."

The key phrase in the above-quoted language is "the New York itemized deduction otherwise allowable under this section," in reference to Tax Law § 615(a). Subsection (f) was meant to impose a limitation apart from the calculation of the New York itemized deduction, which, as determined above, is inextricably linked to the computation of the Federal itemized deduction, culminating in Form 1040, Schedule A, line "26." The reference to the New York

itemized deduction in Tax Law § 615(a) clearly indicates a recognition of that section and its distinct independence from the additional limitation imposed by subsection (f). The Administrative Law Judge concluded that there is no basis for petitioner's argument that "since the objectives sought to be achieved by both Section 68(a) . . . and 615(f) . . . are absolutely the same," they cannot be used in tandem for New York tax purposes. The limitations are distinct, independent and are authorized by separate statutory provisions. The fact that Tax Law § 615(f) references the provision for the itemized deduction in Tax Law § 615(a) indicates that the Legislature was aware of the implications of the limitations imposed by that section, and its plain meaning and intent are clear and any other interpretation would corrupt the plain meaning of the statute (McKinney's Cons Laws of NY, Book 1, Statutes §§ 76, 94; People v. Munoz, supra).

Since the Administrative Law Judge addressed this issue completely and correctly, we affirm the determination of the Administrative Law Judge for the reasons stated therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Moe D. Karash and Ruth (deceased) Karash is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petitions of Moe D. Karash and Ruth (deceased) Karash are denied; and

4. The notices of deficiency, dated December 20, 1993 and November 7, 1994, are sustained.

DATED: Troy, New York
March 13, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner