

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RUTH K. KITETA	:	DECISION
	:	DTA No. 813667
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law and	:	
the Administrative Code of the City of New York for the	:	
Year 1989.	:	

Petitioner Ruth K. Kiteta, 29 East 29th Street, New York, New York 10016, filed an exception to the determination of the Administrative Law Judge issued on August 8, 1996. Petitioner appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Susan Hutchison, Esq. and Peter T. Gumaer, Esq., of counsel).

Petitioner filed a letter in lieu of a brief in support of her exception. The Division of Taxation filed a brief in opposition and petitioner filed a reply letter. Petitioner's request for oral argument was denied.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether petitioner has proven that she did not receive a check pursuant to a refund claimed on her 1989 personal income tax return, thereby necessitating a reduction in the tax asserted in a Notice of Deficiency for the year 1989 by the amount of such refund.

FINDINGS OF FACT

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

Petitioner, Ruth K. Kiteta, timely filed her 1989 New York State personal income tax return (Form IT-201). On said return petitioner claimed a refund of \$3,078.38.

Based on the amounts reported on petitioner's return, the Division of Taxation

("Division") issued a refund check to petitioner in the amount of \$2,382.54 on or about June 2, 1990. A photocopy of the front and back of this check was entered into evidence in this matter by the Division. It is noted that the check bears the same address as stated by petitioner on her 1989 income tax return. It is further noted that the difference between the refund amount claimed by petitioner on her return and the amount of the refund check resulted from the Division's application of \$695.84 of the claimed amount to tax liabilities of prior years.

The refund check referred to above was negotiated. This fact is established by the existence of keypunched numbers indicating the amount of the check in the lower right corner of the front of the check. Additionally, the reverse side of the check contains the endorsement "Ruth Kiteta for Deposit Only". Also, although the photocopy of the check in evidence is somewhat poor there appear to be numbers on the back of the check indicative of bank processing.

On January 12, 1993, the Division issued to petitioner a Notice of Deficiency asserting \$2,920.00 in additional State and City income tax due, plus penalty and interest, for the year 1989. This deficiency resulted from certain adjustments made by the Internal Revenue Service to petitioner's reported Federal itemized deductions. Information regarding these adjustments was furnished by the IRS to the Division which made corresponding adjustments to petitioner's reported New York itemized deductions, calculated the resulting deficiency and issued the subject notice.

It should be noted that the starting point for the Division's calculation of the deficiency herein is petitioner's tax liability as reported on her 1989 New York State personal income tax return. Such calculation thus presumes that petitioner received her refund check for 1989.

Pursuant to a Conciliation Order, dated January 6, 1995, the Division cancelled the penalty asserted in the subject notice. Except for this adjustment, the Conciliation Order sustained the notice.

Petitioner's 1989 New York personal income tax return and a copy of petitioner's 1989

Federal return (Form 1040) were entered into evidence herein. Both of these documents bear petitioner's signature.

Petitioner denied that she received the refund check in question. She did testify, however, that the signature on the back of the check resembled her own.

In her Request for Conciliation Conference filed in respect of the subject deficiency, petitioner stated, in part:

"(1) When I filed my taxes for 1989 I received a refund for what I was entitled to.

(2) I never had to pay extra taxes for all the years that I have ever worked - I always received a refund."

OPINION

In his determination below, the Administrative Law Judge stated that, based upon the evidence presented to him, it was clear that the refund check was issued and negotiated. In fact, the Administrative Law Judge concluded that the evidence demonstrated that petitioner herself negotiated the refund check. In reaching this conclusion, the Administrative Law Judge noted that the signature on the back of the check purported to be that of petitioner, the samples of petitioner's signature in the record, which appear on her 1989 Federal and State income tax returns, her Request for a Conciliation Conference, her petition and her reply letter brief, are all similar to the signature which appears on the refund check. The Administrative Law Judge also noted that petitioner, in her testimony, conceded that the signature on the back of the check was similar to her own. Therefore, based upon the lack of any evidence presented by petitioner, the Administrative Law Judge determined that petitioner failed to meet her burden of proving her contention that she did not endorse the refund check in question and, thus, she was not entitled to any further modification to the Notice of Deficiency issued to her.

On exception, petitioner continues to argue that she never received nor ever cashed the 1989 refund check. Petitioner alleges that although the signature on the back of the check is similar to hers, she did not sign it. Petitioner claims that the signature on the back of the refund check could have been transferred onto the check from any one of her signatures contained in other documents.

Petitioner further contends that, at the formal hearing, she was first informed that the refund check had been keypunched. However, petitioner asserts that her bank, in fact, does not keypunch checks when cashing them. Rather, petitioner argues that her bank always stamps the back of the check which clearly indicates which bank negotiated which checks. Therefore, petitioner concludes by stating that since the refund check in issue does not clearly show which bank stamped the back of the check, it is not clear that it was her bank. In support of her exception, petitioner submitted a letter which included photocopies of 12 checks written on her bank accounts.

In response, the Division argues that since the Administrative Law Judge closed the record in this matter at the conclusion of the hearing on January 5, 1996, the Tax Appeals Tribunal cannot accept the additional documentation submitted by petitioner in her letter brief. Furthermore, the Division states that the refund check was negotiated and petitioner failed to prove that her signature on the back of the check was a forgery. Thus, the Division asserts that, based upon the evidence in the record, petitioner has failed to prove that she is entitled to any modification of the Notice of Deficiency.

In her reply, petitioner argues that the record in this matter could not have been closed at the conclusion of the hearing since the Administrative Law Judge did not render his decision in this matter until August 8, 1996 and he made specific findings of fact in his determination. Furthermore, petitioner argues that the Division has not proven that her bank keypunched checks when negotiating same and that the Division has failed to prove which bank negotiated her refund check.

We begin by addressing the submission of the photocopies of several checks by petitioner with her letter brief. We have consistently rejected such attempts to introduce additional evidence into the record (see, Matter of Sagullo, Tax Appeals Tribunal, August 10, 1989; Matter of Ronnie's Suburban Inn, Tax Appeals Tribunal, May 11, 1989), and our policy of limiting the submission of evidence after the hearing is closed is based on a sound principle:

"[i]n order to maintain a fair and efficient hearing system, it is essential that the hearing process be both defined and final. If the

parties are able to submit additional evidence after the record is closed, there is neither definition nor finality to the hearing" (Matter of Schoonover, Tax Appeals Tribunal, August 15, 1991).

The Administrative Law Judge, at the conclusion of the hearing in this matter, asked whether the parties had anything further to submit and each party said that they had nothing. Therefore, he closed the record (tr., p. 40). Hence, we cannot consider the additional documentation submitted by petitioner in her letter brief.

After reviewing the entire record in this matter, we conclude that the Administrative Law Judge adequately and completely addressed the issue presented to him and we affirm his determination based upon the reasoning contained therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Ruth K. Kiteta is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Ruth K. Kiteta is denied; and
4. The Notice of Deficiency dated January 12, 1993, as modified by the Conciliation Order dated January 6, 1995, is sustained.

DATED: Troy, New York
May 22, 1997

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

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

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner