STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
SHYAM AND VANDANA L. CHAWLA	:	DECISION DTA NOS. 813769
for Redetermination of Deficiencies or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1991 and 1992.	:	AND 814450

Petitioners Shyam and Vandana L. Chawla, 2 Diaz Court #3H, Franklin Park, New Jersey 08823-1762, filed an exception to the determination of the Administrative Law Judge issued on November 27, 1996. Petitioner Shyam Chawla appeared pro se, and on behalf of his wife, petitioner Vandana L. Chawla. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners filed a brief in reply. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation correctly determined that petitioners improperly adjusted for out-of-state income on their New York State nonresident income tax returns filed for the years at issue.

FINDINGS OF FACT

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

On August 8, 1994, the Division of Taxation ("Division") issued to Shyam Chawla and Vandana L. Chawla ("petitioners"), a Notice of Deficiency asserting additional personal income

tax due in the amount of $991.76, plus interest, for a total amount due of $1,146.01 for the year 1991.

On July 10, 1995, the Division issued a Statement of Proposed Audit Changes to petitioners asserting additional personal income tax due of $825.74, plus interest, for a total amount due of $963.84 for the year 1992. The Statement of Proposed Audit Changes contained an explanation of the Division's position stating, in pertinent part, as follows:

> "The Tax Reform and Reduction Act of 1987 substantially changed the method of figuring your nonresident tax. You must first figure a base tax as if you were a New York State resident, including income, gains, losses and deductions from all sources. Then you must multiply the base tax by a fraction whose numerator is income from New York sources, and whose denominator is federal adjusted gross income.
>
> "Beginning in tax year 1988, the amount shown on line 23 must be the total of the Federal Amount Column, lines 19 through 22, on Form IT-203.
>
> "The subtraction from income has been disallowed as not specifically authorized under section 612 of the New York State Tax Law.
>
> "Items of income on your Form IT-203 tax return must be entered in the Federal Amount Column exactly as they appear on your federal return. This column must be computed as if you were a full year resident of New York State.
>
> * * *
>
> "The income percentage is computed by dividing the adjusted gross income in the New York State column on line 19 by the adjusted gross income in the federal amount column on line 19."

At the hearing, the Division was granted additional time to submit the statutory notice relating to the 1992 tax year. By letter dated March 14, 1996, the Division's representative, Peter T. Gumaer, Esq., advised as follows:

> "My review of the file has disclosed that there was no statutory notice for the 1992 tax year. Instead, petitioners paid the tax when they received the statement of proposed audit adjustments. Petitioners then filed the petition in DTA No. 814450 seeking a refund. There was no assessment because petitioners had already paid the tax.
>
> "My review has also shown that petitioners failed to file a request for refund. As a result, the Division could not issue a notice of disallowance to petitioners. Therefore, the petition in DTA No. 814450 should be treated as petitioner's request for refund, and the Division's answer should be treated as the Division's denial of same."

For each of the years at issue, petitioners, residents of the State of New Jersey, filed a Form IT-203 (a New York State nonresident income tax return) under the filing status "married

filing joint return". During each year, petitioner Shyam Chawla was employed by the U.S. Department of the Treasury in its New York office and petitioner Vandana L. Chawla was employed by Speadmark, Inc. in New Jersey.

On line 28 of each New York State nonresident return, petitioners subtracted Ms. Chawla's New Jersey income from the "Federal Amount" on line 23 to arrive at their New York adjusted gross income. Using this New York adjusted gross income figure to determine their New York State tax, petitioners then reduced their tax liability by applying an income percentage (calculated by dividing their New York State income amount by their Federal income amount) to their New York State tax to arrive at their allocated New York State tax.

The Division's 1992 Publication 352 contained notice N-92-31 (***see***, Division's Exhibit "K") which stated, in part, as follows:

> "On December 22, 1992, the New York State Court of Appeals in ***Lawrence J. Brady et al., v. the State of New York et al.***, ruled that a nonresident married couple filing a joint federal return must use the combined income of both nonresident spouses to determine the base tax subject to the New York source income percentage allocation, even if only one spouse has New York source income, and therefore must file a joint New York State return. However, the court further held that the spouse with no New York source income cannot be required to sign the joint return and cannot be held liable for any tax, penalty or interest that may be due. This decision applies to tax years 1992 and thereafter."

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge concluded that petitioners improperly adjusted for Mrs. Chawla's New Jersey income by deducting the same on line 28 of their nonresident income tax returns filed with the State of New York for the years 1991 and 1992. The Administrative Law Judge noted that Tax Law § 689(e) properly places the burden on petitioners as to the correctness of their computation of tax for the years at issue. The Administrative Law Judge determined that petitioners completely failed to show any authority for deducting Mrs. Chawla's New Jersey income on line 28 of their New York State nonresident income tax returns.

ARGUMENT ON EXCEPTION

Although petitioners' argument is unclear, they seem to be emphasizing that ***Matter of Brady v. State of New York*** (172 AD2d 17, 576 NYS2d 896, ***appeal dismissed*** 79 NY2d 915,

581 NYS2d 667, ***cert denied*** 509 US 905, 125 L Ed 2d 692) changed the treatment of income reported by nonresidents for 1992 and thereafter. Furthermore, it appears that petitioners assert that since they deducted Mrs. Chawla's New Jersey income on line 29 of their 1988 New York State Nonresident Income Tax Return (Form IT-203) and the ***Brady*** decision did not change the law until 1992, it necessarily follows that because their 1988 return was allegedly accepted by the New York State Department of Taxation and Finance (hereinafter the "Department") as filed indicates that their 1988 filing was correct and that the tax returns filed for the years at issue must also be correct. In support of this argument, petitioners attached a copy of their 1988 tax return to their brief.

The Division argues that the record clearly demonstrates that petitioners' calculation is incorrect. Therefore, it urges us to sustain the determination of the Administrative Law Judge.

In their reply brief, petitioners continue to allege that the Division has the burden of proof in this case to show why petitioners' computation is incorrect. Furthermore, petitioners attached to their reply brief copies of their 1984, 1985, 1986, 1990 and 1995 IT-203s with attachments as well as blank IT-203s for the three years 1984, 1985 and 1986. Lastly, petitioners continue to argue that representatives from the Department's Taxpayer Services Division told them how to complete their tax returns. Therefore, they argue that if the Department's instructions were incorrect, then they were misled.

OPINION

Initially, we must address the numerous documents that petitioners submitted with their briefs filed in support of their exception. We have a long-standing policy of not allowing the submission of evidence after the close of the record. This policy is essential in order to maintain a fair and efficient hearing system, to provide definition and finality to the hearing, and to protect the adversary's right to question the evidence on the record (***see, Matter of Schoonover***, Tax Appeals Tribunal, August 15, 1991). Accordingly, all documentary submissions made by petitioners on exception have not been considered in the determination of this decision.

We affirm the determination of the Administrative Law Judge. In our review of the record, it is clear that petitioners have not submitted any evidence or pointed to any authority for deducting Mrs. Chawla's New Jersey income on line 28 of their Forms IT-203. Since the Administrative Law Judge adequately and completely dealt with the issue, we sustain his determination for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Shyam and Vandana L. Chawla is denied;

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

3. The petitions of Shyam and Vandana L. Chawla are denied; and

4. The Notice of Deficiency dated August 8, 1994 is sustained and petitioners' claim for refund for the tax year 1992 is denied.

DATED: Troy, New York
September 18, 1997

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Donald C. DeWitt
President

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Carroll R. Jenkins
Commissioner

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Joseph W. Pinto, Jr.
Commissioner