

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
RUTH K. KITETA	:	DECISION
	:	DTA NO. 815119
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Income Taxes	:	
under Article 22 of the Tax Law and the New York City	:	
Administrative Code for the Year 1990.	:	

Petitioner Ruth K. Kiteta, 29 East 29th Street, New York, New York 10016-7954, filed an exception to the determination of the Administrative Law Judge issued on December 18, 1997. Petitioner appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel).

Petitioner filed a brief in support of her exception and a reply brief. The Division of Taxation filed a letter in lieu of a brief in opposition. Oral argument was not requested.

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

ISSUES

I. Whether petitioner has proven that the Notice of Deficiency issued by the Division of Taxation in regard to her 1990 resident income tax return was incorrect or erroneous.

II. Whether petitioner's failure to pay the correct amount of tax for the year 1990 was due to reasonable cause and not petitioner's negligence.

III. Whether petitioner has proven that she did not receive or negotiate the refund check issued to her relating to her 1990 resident income tax return and is, therefore, entitled to either a reduction in the amount of the Notice of Deficiency or a refund.

FINDINGS OF FACT

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

Petitioner filed a 1990 Resident Income Tax Return for New York State and New York City (hereinafter “State return”). Petitioner also filed a 1990 U.S. Individual Income Tax return (hereinafter “Federal return”). Both of these returns were introduced into evidence at the hearing in this matter.

The 1990 State return as filed by petitioner showed a refund due to petitioner of \$271.23. The Division allowed a refund in the lesser amount of \$247.23 due to several mathematical errors in petitioner’s return. The first was an error in subtraction. When subtracting \$2000.00 (Line 49) from \$45,939.49 (Line 48) petitioner obtained the result of \$43,899.49 (Line 50) instead of the correct result of \$43,939.49. The second was an error in addition. When adding \$3,096.00 (Line 58), \$1,502.00 (Line 67) and \$20.00 (Line 68) petitioner obtained the result of \$4,598.00 (Line 69) instead of the correct result of \$4,618.00.

A refund check dated June 10, 1991 in the amount of \$247.23 was issued in petitioner’s name and setting forth petitioner’s correct address. The Division introduced a photocopy of the check in question. On the reverse side of the check appears the handwritten endorsement “Ruth Kiteta For Deposit Only”. There are other various markings on the back of the check, most of which are illegible. Of those that are legible are several dates, “June 1991” and “June 17, 1991”,

and the initials “F.R.B.”, presumably referring to a Federal Reserve Bank. These markings are all consistent with a check dated June 10, 1991 having been negotiated. There are some markings on the face of the check, but these are illegible. The handwritten signature of Ruth Kiteta in the endorsement is similar to petitioner’s signature on her Federal and State returns, petition and letter in lieu of a reply brief. The markings on the check together with the endorsement indicate that the check was negotiated.

Petitioner testified that she never received or negotiated the refund check in question. She also introduced photocopies of checks from her checking account with Citibank. The purpose of her submission was to show that when she received her original negotiated checks back from her bank each check clearly indicated the name of the bank that had negotiated the check.

On September 27, 1993 the Division issued to petitioner a Notice and Demand for Payment of Tax Due (notice number L-007965843) in the amount of \$236.30 in tax due and \$46.16 in interest due for a total of \$282.46. Petitioner paid this amount. The basis of the notice was that petitioner had claimed two dependent exemptions in the amount of \$2,000.00 on line 49 of her State return.

Petitioner testified that she had never claimed more than one exemption for income tax purposes. However, the testimony offered by petitioner on this issue centered on how increasing or decreasing the number of “exemptions” she claimed affected her paycheck. Therefore, it is evident that petitioner’s testimony concerned allowances for withholding tax purposes and did not relate to exemptions as claimed on line 49 of her State return.

Line 49 of petitioner’s State return was for dependent exemptions. Petitioner listed \$2,000.00 on this line of her return which equals two dependent exemptions at \$1,000.00 each.

There is no doubt from the face of the return that petitioner claimed two dependent exemptions on her State return. Petitioner's filing status is clearly listed as single on line 1 of her Federal and State returns. On her Federal return petitioner claimed only an exemption for herself as indicated on lines 6a through 6e and 36. Petitioner was entitled to claim only those dependent exemptions listed on her Federal return. There were no dependent exemptions listed on petitioner's Federal return and therefore, petitioner was not entitled to the \$2,000.00 claimed on her State return.¹

On October 18, 1993 the Division issued to petitioner a Statement of Proposed Audit Changes in the amount of \$1,267.00 in tax due, \$252.72 in interest due and \$189.71 in penalty due for a total of \$1,709.43. This statement was again based on petitioner's 1990 State return. The statement explained that information concerning petitioner's 1990 Federal return had been provided to the Division by the Internal Revenue Service pursuant to IRC § 6103(d) and that the statement could not have been issued until that time because of the length of time it took to receive and process the Internal Revenue Service information. The Division stated that differences had been found between the amounts listed on petitioner's Federal return and those listed on petitioner's State return.

Petitioner testified that she merely copied the numbers from the Federal return to the State return and that therefore the numbers could not have been different. Petitioner is correct in that the amounts she provided on both returns for itemized deductions were identical.

¹Petitioner was allowed a personal exemption on her Federal return. However, since 1988 Tax Law § 616 does not provide for personal exemptions, only dependent exemptions. This does not appear to be the basis of petitioner's confusion in any event because petitioner claimed two dependent exemptions on her State return and only one personal exemption on her Federal return.

However, the Internal Revenue Service disallowed petitioner's casualty loss in the amount of \$500.00 and recalculated petitioner's medical expense deduction.² Therefore, the amounts *as allowed* by the Internal Revenue Service did not match the numbers as provided by petitioner on her State return. Petitioner also neglected to add back to her Federal itemized deductions the amount of State and local income taxes included in such deductions, as required on line 40 of the State return to arrive at State itemized deductions.

The result of these modifications was that petitioner's New York taxable income was adjusted upward by \$10,805.00 for a corrected New York State taxable income of \$54,745.00. This resulted in the further tax due of \$1,267.00. The statement informed petitioner that if payment was not received by November 17, 1993 a Notice of Deficiency would be issued.

On November 29, 1993 the Division issued to petitioner a Notice of Deficiency (notice number L-008045979) in the amount of \$1,267.00 in tax due, \$263.25 in interest due and \$194.97 in penalty due for a total of \$1,725.22.

Petitioner requested a conciliation conference from the Bureau of Conciliation and Mediation Services of the Division and on March 22, 1996 a Conciliation Order was issued sustaining the statutory notice in full. The Division of Tax Appeals received a petition protesting the Conciliation Order on June 10, 1996. Both the conciliation order and the petition list the notice at issue as notice number L-008045979.

The petition in this matter addresses primarily the issue of whether petitioner received her refund check. It does, however, state that petitioner does not understand how she could owe

²The incorrect amount of medical expense deductions claimed by petitioner was the result of a multiplication error evidenced by line 3 of Schedule A of the Federal return.

more money for the tax year 1990. Petitioner's testimony at the hearing was somewhat confused on the question of what notice or notices issued by the Division she had protested. In particular, she testified that she could not recall receiving the Notice of Deficiency, and that she did not understand why the additional amounts contained in the Notice and Demand were assessed after modifications had already been made prior to the Division's issuing the refund check in a reduced amount from what she had claimed.

The Tax Appeals Tribunal issued a decision concerning this taxpayer in a case that involved similar issues for the tax year 1989 (*Matter of Kiteta*, Tax Appeals Tribunal, May 22, 1997). The facts found by the Tax Appeals Tribunal in the first case indicate that a notice was issued as a result of IRS adjustments to petitioner's 1989 itemized deductions as listed on her Federal return for that year. A refund check had been issued prior to the notice and petitioner claimed not to have received or negotiated the refund check. The photocopy of the refund check in evidence had keypunched numbers on the front of the check indicating the amount of the check. The reverse side of the photocopy of the check was of poor quality but there appeared to be numbers indicating bank processing. Also on the reverse side of the check was the handwritten notation "For Deposit Only" and what appeared to be petitioner's signature. The Tax Appeals Tribunal upheld the administrative law judge's finding that the signature on the check was similar to that appearing on several other documents in evidence: petitioner's 1989 Federal and State income tax returns, petitioner's Request for a Conciliation Conference, her petition and her reply letter brief. Petitioner conceded during her testimony that the signature on the check resembled her signature. The Tax Appeals Tribunal upheld the determination of the

administrative law judge that petitioner had failed to prove her factual contentions regarding the refund check (*Matter of Kiteta, supra*).

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In her determination, the Administrative Law Judge concluded that only Notice of Deficiency number L-008045979 and not Notice and Demand for Payment of Tax Due number L-007965843 was at issue in the current proceedings. Since the Notice and Demand for Payment of Tax Due was not the subject of the petition, the Administrative Law Judge concluded that the Division of Tax Appeals had no jurisdiction to address petitioner's substantive arguments regarding this notice and dismissed the petition as it pertained to said notice.

As to the Notice of Deficiency, the Administrative Law Judge concluded that since petitioner did not introduce any evidence in support of her position that this notice was erroneous, petitioner failed to meet her burden of proof to overcome the presumption of correctness which attaches to such notices. Thus, the Administrative Law Judge sustained the Notice of Deficiency.

The Administrative Law Judge also concluded that petitioner did not prove that her failure to pay the correct amount of tax for 1990 was due to reasonable cause and not negligence, thereby allowing for the abatement of penalties assessed. In this regard, the Administrative Law Judge noted that petitioner did not raise, argue or present any evidence on this issue. Thus, she sustained the negligence penalty assessed pursuant to Tax Law § 685(b).

Finally, the Administrative Law Judge concluded that since petitioner did not meet her burden of proof to show that she did not receive or negotiate the refund check in question, she was not entitled to any credit against the Notice of Deficiency based on that refund check.

ARGUMENTS ON EXCEPTION

Petitioner presents essentially the same arguments on exception as she presented to the Administrative Law Judge. With regard to the Notice of Deficiency, petitioner asserts that she disagrees with and does not understand the manner in which the additional tax asserted has been calculated. Petitioner presents no arguments on the issue of penalties except to state that the errors on her return were not intentionally made. Petitioner maintains that she did not receive the June 10, 1991 refund check and never received a refund from New York State prior to 1992. She argues that the Division should be able to determine what bank the refund check was deposited into and verify that it was deposited into her account. Petitioner asserts that because there is no bank name stamped on the check and only “keypunch” marks, it is not possible to determine if the check was cashed at all.

The Division argues that the determination of the Administrative Law Judge should be sustained because petitioner has failed to meet her burden of proof that the Notice of Deficiency was erroneous.

OPINION

After reviewing the entire record in this matter, we conclude that the Administrative Law Judge adequately and completely addressed the issues presented to her and we affirm her determination based upon the reasoning contained therein. However, having found no jurisdiction to address the Notice and Demand, and dismissing the petition with respect to same, the Administrative Law Judge then sustained the notice. We agree with her conclusion to dismiss the petition but conclude that once it is determined that the Division of Tax Appeals has

no jurisdiction over a matter, the analysis ends there (*Matter of Kaiser*, Tax Appeals Tribunal, August 1, 1996).

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 affirmed;
3. The petition of Ruth K. Kiteta pertaining to the Notice and Demand for Payment of Tax Due (notice number L-007965843) is dismissed and that portion pertaining to Notice of Deficiency (notice number L-008045979) is denied; and
4. The Notice of Deficiency (notice number L-008045979), dated November 29, 1993, is sustained.

DATED: Troy, New York
September 17, 1998

/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