

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
HIPOLITO H. VERAS	:	
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the New York City Administrative Code for the Year 1994.	:	DECISION DTA NO. 817215

Petitioner Hipolito H. Veras, 820 West 180 Street, Apt. 4, New York, New York 10033, filed an exception to the determination of the Administrative Law Judge issued on November 22, 2000. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Margaret T. Neri, Esq., of counsel).

Petitioner filed a brief in support of his exception and the Division of Taxation filed a letter in lieu of a brief. Petitioner's request for oral argument was denied.

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

ISSUES

I. Whether petitioner has demonstrated that he was entitled to claim head of household status on his 1994 personal income tax return.

II. Whether petitioner was entitled to claim two dependent exemptions on his 1994 personal income tax return.

III. Whether petitioner substantiated certain rental expenses claimed on his 1994 personal income tax return.

IV. Whether the Division of Taxation wrongly seized funds from a bank account belonging to petitioner and applied those funds to an outstanding tax liability.

FINDINGS OF FACT

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

Petitioner, Hipolito H. Veras, timely filed a 1994 New York State and City personal income tax return showing his filing status as head of household. On that return, he claimed a standard deduction and two dependent exemptions totaling \$1,000.00.

Petitioner attached a Federal Schedule E, a Supplemental Income and Loss statement (“schedule E”), to his 1994 return. On the schedule E, he reported rental income of \$15,000.00 from property located at 109-33 Guy R. Brewer Boulevard, Jamaica, Queens. He reported expenses associated with that property of \$30,968.00, including advertising expenses of \$3,000.00; cleaning and maintenance expenses of \$15,500.00; legal and professional fees of \$5,000.00; repairs of \$5,000.00; taxes of \$128.00; and utilities of \$1,500.00. He also claimed depreciation of \$5,150.00, yielding total expenses of \$36,118.00 and total losses of \$21,118.00.

For 1994, petitioner reported wage and salary income of \$29,471.00; interest income of \$1,615.00; and losses from rentals of \$21,118.00, resulting in Federal adjusted gross income of \$9,968.00. From this, he subtracted a standard deduction of \$7,000.00 and two dependent exemptions totaling \$1,000.00 to calculate New York taxable income of \$1,968.00. Tax due on this amount was \$79.00. He subtracted a household credit of \$75.00 to determine total New

York State tax due of \$4.00. New York City resident tax was determined to be \$50.00. He subtracted a household credit of \$100.00 from this amount to arrive at total New York City income tax due of zero. Total New York State and City income taxes withheld by petitioner's employers amounted to \$956.00. Thus, petitioner claimed a refund of \$952.00.

Petitioner's address as shown on the 1994 personal income tax return is P.O. Box 7723, New York, New York 10116. The same address is shown on two miscellaneous income statements filed with the return, each of which was issued to Hipolito H. and Inocencia Veras. The paid preparer of the return is identified as Hipolito Veras, Income Tax Service, and the address given is P.O. Box 7723, New York, New York. The return is dated March 16, 1995. Two wage and tax statements (W-2 forms) are attached to petitioner's return. They show his address as 820 W. 180th Street, Apt. 4, New York, NY 10033. Petitioner's wife, Inocencia Veras, filed a separate New York State personal income tax return for 1994 where she claimed the couple's three children as dependents. The address shown on her return is the same as the address shown on petitioner's W-2 forms, 820 W. 180th Street, Apt. 4, New York, New York.

On June 13, 1997, Elizabeth Smeltzer, a Tax Technician II in the Audit Division of the Division of Taxation ("Division"), sent a letter to petitioner at the address shown on his return informing him that an audit was being conducted of his 1994 tax return and asking him to answer certain questions or provide information as follows:

1. What is your legal marital status?
2. Please provide the name of the individual who qualifies you for the Head of Household filing status and state that person's relationship to you.
3. Complete and return one (1) copy of the enclosed questionnaire in regard to the cost of maintaining your household.

4. Send a copy of your rental lease or property tax and mortgage interest statements.
5. Send a copy of your 1995 federal income tax return including all schedules and attachments.
6. Send a copy of the birth certificate for every dependent which you are claiming.
7. Please send documentation to support the rental expenses claimed. The documentation must show:
 - a. Name and address to whom paid.
 - b. Amount paid and date paid.
 - c. Photocopies of paid receipts or cancelled checks.
 - d. Computation of depreciation and a copy of the depreciation schedule.
 - e. Expenses must be broken down and listed by type of expense as shown on Schedule E.

The Division received no reply to the request for information. On January 12, 1998, the Division issued a Statement of Proposed Audit Changes to petitioner, mailing it to the address shown on the 1994 personal income tax return. It notes that petitioner did not reply to the Division's letter of June 13, 1997 and that, as a result, petitioner's filing status was changed to single, his dependent exemptions were disallowed and all schedule E deductions were disallowed. In addition, two penalties were imposed: a negligence penalty of 5% pursuant to Tax Law § 685(b)(1) and a penalty equal to 50% of any interest due on the deficiency pursuant to Tax Law § 685(b)(2). As a result of these adjustments, the Division computed an additional tax due of \$4,335.00, interest of \$1,062.32 and penalty of \$785.29, resulting in a total due of \$6,182.61. Petitioner was informed that he had until February 11, 1998 to agree or disagree with the Division's findings. No response was received from petitioner; therefore, the Division issued to petitioner a Notice of Deficiency (assessment number L-014573446-5), dated March 19, 1998,

asserting a tax deficiency as shown in the Statement of Proposed Audit Changes plus interest and penalty.

The Notice of Deficiency was addressed to petitioner at the same address as shown on his 1994 personal income tax return, P.O. Box 7723, New York, New York.

Petitioner filed a request for a conciliation conference in the Bureau of Conciliation and Mediation Services (“BCMS”), and a conference was held on March 18, 1999. As a result, BCMS issued to petitioner a Conciliation Order, dated May 28, 1999, sustaining the Notice of Deficiency.

The Conciliation Order is addressed to petitioner at 820 West 180 Street, Apt. 4, New York, New York 10033. A petition was filed in the Division of Tax Appeals on July 19, 1999 showing the same address. This is the address shown on his wife’s 1994 income tax return and petitioner’s own W-2 forms.

The petition is confusing because of petitioner’s lack of facility with English. He appeared to make two assertions in the petition: first, that he was legally entitled to claim two dependents on his 1994 tax return, and second, that the Division wrongly took \$4,372.71 out of a bank account maintained either by petitioner or by his wife.¹ At the beginning of the hearing in this matter, petitioner raised two additional issues. He claimed that he had never received the Division’s letter of June 13, 1997 or the Statement of Audit Changes, and he introduced evidence to support the expense deductions he had claimed on his 1994 tax return.

¹ The petition states: “Bureau of Conciliation and Mediation Services take out my account from my wife to amount the money \$4372.71.”

Filing status and dependent exemptions

The W-2 forms attached to petitioner's 1994 tax return indicate that petitioner lived with his wife and children in 1994. The address that appears on those forms is the same as the address shown on his wife's 1994 personal income tax return, 820 West 180th Street, Apt. 4, New York, New York 10033. As noted, petitioner also listed this address on his petition to the Division of Tax Appeals, and the Conciliation Order issued to petitioner was mailed to this address.

Petitioner did not claim his children as dependents on his 1994 personal income tax return; rather, he claimed his mother and father as his dependents. Petitioner's testimony regarding his living arrangements in 1994 were vague and confusing. Under questioning from the Administrative Law Judge, petitioner testified as follows:

Administrative Law Judge: I'm trying to find out what household you were the head of. So who were you living with, friends, relatives, with wife, with mother?

Petitioner: I living with my mother at that time.

Administrative Law Judge: And this is 1994?

Petitioner: '94

Administrative Law Judge: Did you live with her the whole year?

Petitioner: Yeah.

Administrative Law Judge: And where did she live?

Petitioner: The same address.

Administrative Law Judge: Well, she doesn't live in a post office box?

Petitioner: No. 820 West *184th* Street.

* * *

Administrative Law Judge: Did anybody else live there besides you and your mother?

Petitioner: Me and my mother, we live there.

Administrative Law Judge: Just the two of you?

Petitioner: Yes.

* * *

Administrative Law Judge: And where you put two here you were claiming your mother?

Petitioner: And my father.

Administrative Law Judge: And were they both living together in the same place?

Petitioner: At that time, yes, at that time, yes.

Administrative Law Judge: So the three of you were living on 184th Street?

Petitioner: Yes.

Petitioner's mother, Rosa Soto, received monthly social security benefits during 1994.

Pursuant to State Administrative Procedure Act § 306(4), official notice is taken of the following facts: Petitioner mailed a response to the Division's brief to this Administrative Law Judge. The envelope containing that response is postmarked June 7, 2000. The return address shown on the envelope is Hipolito H. Veras, P.O. Box 7723, New York, New York 10116.

Substantiation of deductions

At the hearing, petitioner submitted an amended 1994 personal income tax return prepared by Luis Rodriguez, a certified public accountant. The return was prepared and signed shortly before the hearing.

The originally-filed 1994 tax return and the amended return contain the following differences:

(a) The original return showed interest income of \$1,615.00; the amended return shows no interest income.

(b) Petitioner claimed an IRA deduction of \$1,000.00 on the amended return which was not claimed on the original return.

(c) The schedule E filed with the original 1994 return shows rental income of \$15,000.00 and expenses of \$36,118.00 yielding total losses of \$21,118.00. The amended return shows rental income of \$17,7445.00 and expenses of \$23,121.00, including mortgage expenses of \$11,683.00, repairs of \$7,138.00, taxes of \$243.00 and depreciation of \$4,057.00 yielding losses of \$5,676.00.

(d) Petitioner did not claim either a New York State or New York City household credit on the amended return, as he did on the original return.

(e) Petitioner's total 1994 taxable income is shown as \$14,795.00 on the amended return, with total State and City taxes due of \$1,082.00. Petitioner subtracted taxes withheld of \$956.00 to calculate total taxes owed of \$126.00. On the original return, petitioner reported New York taxable income of \$1,968.00 and sought a refund of \$952.00.

To support the deductions taken in connection with the rental property at Guy R. Brewer Boulevard, petitioner submitted certain documents.

(a) Petitioner submitted a mortgage dated July 18, 1992 given by "HIPOLITO VERAS and INOCENCIA VERAS, his wife, residing at 109-33 Guy R. Brewer Boulevard, Jamaica, New York" to an unrelated individual identified by petitioner as the former owner of the property.

The amount of the mortgage is \$13,000.00, and the property securing the mortgage is the Guy R. Brewer Boulevard house.

(b) Petitioner submitted a commitment letter from Kadilac Mortgage Bankers, Ltd, dated May 8, 1992. The letter is addressed to Hipolito and Inocencia Veras at "16 Broadway Terrace, New York, NY 10040." The letter informs petitioner and Mrs. Veras of approval of a mortgage for the property located at 109-33 Guy Brewer Boulevard.

(c) Petitioner submitted a Statement of Payment from the New York City Housing Authority dated March 1, 1995. It shows one month of rental payments made by the City on behalf of two tenants. The landlord is identified as Hipolito H. Veras and Inocencia Veras. The landlord's address is shown as P.O. Box 7723, New York, New York 10116. The rent is \$726.75 for one apartment and \$727.00 for the other apartment. Both apartments are located in the building at 109-33 Guy Brewer Boulevard.

(d) A computer generated amortization schedule was submitted to prove the amount of petitioner's monthly mortgage expense for the Guy R. Brewer Boulevard property. It appears that the schedule was produced by petitioner's accountant.

(e) Petitioner submitted a copy of two separate receipts from Unlimited Hardware, Inc., 4193 Broadway, New York, New York, which show sales made to Hipolito Veras, 109-33 Guy R. Brewer Boulevard, Jamaica. The two receipts are consecutively numbered, numbers 0003379 and 0003380. They bear the same order number, 11433-295. Each receipt lists a large quantity of building materials, for example, two by fours, paint and plaster. The date on the original copy of receipt number 0003379 appeared to be December 7, 1994; however, petitioner testified that this purchase was actually made on December 18, 1994 and that the clerk made a mistake on the

date. The date on receipt number 0003380 appears to be December 7, 1994.² The total of the two receipts is \$6,564.00.

The bank payment

The Division submitted copies of two documents generated from its Case and Resource Tracking System (“CARTS”). CARTS maintains records of each assessment issued by the Division as well as all payments made by taxpayers. Ms. Smeltzer submitted an affidavit explaining how to read the two documents. The first document shows that a bank payment of \$4,372.71 was applied as payment for assessment L-013784172 issued to petitioner. Ms. Smeltzer states that the second document “indicates that [assessment L-013784172] is an outstanding deficiency for the 1995 tax year.” However, the second document, entitled Assessment Summary, does not explicitly state the tax year involved. It refers to assessment L-013784172 5, and it identifies the assessment as an assessment of personal income tax.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In her determination, the Administrative Law Judge noted that a presumption of correctness attaches to a properly issued Notice of Deficiency and the taxpayer bears the burden of proof to demonstrate that the asserted deficiency is erroneous.

The Administrative Law Judge determined that petitioner failed to establish that he was entitled to claim a head of household filing status in 1994. To claim this status, a taxpayer must be an unmarried person who paid over half the cost of maintaining a home for another qualifying person such as a child or parent. The Administrative Law Judge concluded that petitioner was

² The copies placed in evidence are mostly illegible, and the originals, which were compared with the copies at hearing, were also difficult to read. This Administrative Law Judge noted on the record that the original copy of receipt number 0003379 appeared to bear a date of December 7, 1994.

married but separated from his wife and children in 1994. The Administrative Law Judge found no evidence that petitioner paid over half the cost of maintaining his parents' home.

Additionally, the Administrative Law Judge found no evidence that petitioner's address was the same as his parents' address in 1994.

Similarly, the Administrative Law Judge concluded that petitioner was not entitled to claim his mother and father as dependents for 1994. The Administrative Law Judge recited five tests which Internal Revenue Code § 152(b)(2) requires to be met before a taxpayer may claim an exemption for a dependent. The Administrative Law Judge found that petitioner failed to satisfy any of these five tests, except to show that there was a qualifying relationship between the taxpayer and the claimed dependents.

The Administrative Law Judge compared petitioner's amended 1994 return submitted at the hearing with petitioner's original filed return. The Administrative Law Judge noted that the primary differences between the two returns related to expenses incurred in connection with the Guy R. Brewer Boulevard property. The Administrative Law Judge concluded that neither the amended return nor the documents submitted with it provided any basis for modifying the Division's Notice of Deficiency.

The Administrative Law Judge rejected petitioner's deduction for mortgage interest allegedly paid in connection with the Guy R. Brewer property as he did not claim a mortgage interest expense on his original 1994 schedule E and he produced no documents to establish that he paid such an expense in 1994. The Administrative Law Judge also rejected petitioner's deduction for taxes on this property as petitioner failed to produce evidence that he paid such

taxes. Similarly, the Administrative Law Judge denied any deduction for depreciation as it was not shown how petitioner or his accountant calculated the depreciation expense.

The Administrative Law Judge concluded that, due to the significant differences between the expenses claimed on petitioner's original and amended returns, petitioner knowingly claimed expenses on his 1994 return that were never incurred or petitioner inflated the amounts that were expended. Based on petitioner's evasive and contradictory testimony concerning his residence in 1994, the Administrative Law Judge stated that she would have to be thoroughly convinced of the credibility and reliability of the evidence of repairs offered in order to allow that deduction. The Administrative Law Judge found the two receipts offered as evidence of repair expenses totaling \$6,554.00 to be unreliable and lacking in credibility and, thus, denied the repair expenses.

The Administrative Law Judge discussed *Cohan v. Commissioner* (39 F2d 540, 2 USTC ¶ 489) which provides that once a taxpayer proves his entitlement to some amount of a deduction, the court may allow a portion of the deduction claimed even though the exact amount has not been proven. However, in making the approximation of the deduction, the court may bear heavily upon the taxpayer whose inexactitude is of his own making. The Administrative Law Judge noted that recent decisions, such as *Lerch v. Commissioner* (877 F2d 624, 89-1 USTC ¶ 9388), hold that where the taxpayer has refused to provide evidence upon which an estimation could reasonably be based, courts have denied the deduction claimed altogether. Here, the Administrative Law Judge concluded that the documentation to support petitioner's deductions was of such a nature that any taxpayer could be expected to maintain it: evidence of mortgage payments, tax payments, insurance payments, and repair expenses. The Administrative

Law Judge found that petitioner had ample opportunity to offer such documentation and he failed to do so. Therefore, the Administrative Law Judge disallowed any portion of any of the claimed deductions.

The Administrative Law Judge sustained the imposition of the five percent penalty pursuant to Tax Law § 685(b)(1) and the additional interest penalty pursuant to Tax Law § 685(b)(2) because the Administrative Law Judge concluded that petitioner was negligent in maintaining the appropriate records to show that he was the head of a household, entitled to claim his parents as dependents, and to substantiate his expense claims for 1994.

The Administrative Law Judge found no basis on which to modify the Notice of Deficiency based on petitioner's claim that he never received the Statement of Proposed Audit Changes or the Division's letter of June 13, 1997. The Administrative Law Judge concluded that these documents were mailed to a post office box maintained by petitioner in 1994, that petitioner listed that post office box as his address on his 1994 income tax return and that petitioner continued to use the post office box for receipt of mail.

Finally, the Administrative Law Judge determined that petitioner failed to demonstrate that the bank levy of \$4,372.71 was inappropriately applied to an outstanding assessment by the Division.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that he has sufficient evidence to demonstrate entitlement to the claimed deductions.

OPINION

On February 1, 2001, petitioner submitted several documents to the Tax Appeals Tribunal (hereinafter the “Tribunal”) allegedly in support of his exception. By letter dated February 27, 2001, the Secretary to the Tribunal returned the documents to petitioner, advising petitioner that the Tribunal would not consider them. We have held that a fair and efficient hearing process must be defined and final, and the acceptance of evidence after the record is closed is not helpful towards that end and does not provide an opportunity for the adversary to question the evidence on the record (*Matter of Purvin*, Tax Appeals Tribunal, October 9, 1997; *see also*, *Matter of Schoonover*, Tax Appeals Tribunal, August 15, 1991). As a result, we reject petitioner’s attempt to introduce additional evidence into the record after the record was closed.

We affirm the determination of the Administrative Law Judge. We find that the Administrative Law Judge completely and adequately addressed the issues presented to her and correctly applied the Tax Law and relevant case law to the facts of this case. Petitioner has offered no evidence below, and no argument on exception, that would provide a basis for us to modify the determination in any respect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Hipolito H. Veras is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Hipolito H. Veras is denied; and

4. The Notice of Deficiency, dated March 19, 1998, is sustained.

DATED: Troy, New York
June 21, 2001

/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