

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>ABDELAZIZ EL-TERSLI</b>	:	DECISION
	:	DTA NO. 818044
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income Tax	:	
under Article 22 of the Tax Law and the New York City	:	
Administrative Code for the Years 1990 through 1995.	:	

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Petitioner Abdelaziz El-Tersli, 210 Ege Avenue, Jersey City, New Jersey 07304, filed an exception to the determination of the Administrative Law Judge issued on May 9, 2002.

Petitioner appeared by Jonathan B. Altschuler, P.C. (Jonathan B. Altschuler, Esq., of counsel).

The Division of Taxation appeared by Barbara G. Billet, Esq. (Peter B. Ostwald, Esq., of counsel).

Petitioner filed a brief in support of his exception and the Division of Taxation filed a brief in opposition. 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 the Division of Taxation correctly held petitioner subject to New York State and City personal income tax as a resident individual pursuant to New York State Tax Law § 605(b)(1)(A) or (B) and New York City Administrative Code § 11-1705(b)(1)(A) or (B) for the years 1990 through 1995.

II. Whether the Division of Taxation properly determined that petitioner underreported his income by more than 25 percent during any of the years 1990 through 1995.

***FINDINGS OF FACT***

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

Petitioner, Abdelaziz El-Tersli, filed a New York State Resident Income Tax Return (Form IT-201) for each of the years 1990 and 1992. He filed a New York State Nonresident and Part-Year Resident Income Tax Return for each of the years 1991, 1993, 1994 and 1995.

In February 1997, the Division of Taxation (“Division”) commenced a field audit of petitioner’s income tax returns for the years 1990 through 1995.<sup>1</sup> Over the course of the following year, the Division’s auditor conducted an analysis of petitioner’s bank account deposits and withdrawals, based on bank statements supplied to the auditor by petitioner through his then-representative. Petitioner maintained some six checking accounts in 1990 through 1993 and five checking accounts in 1994 and 1995. The checks from these accounts listed either petitioner’s name or, in some instances the name Abdel M. Ibrahim, and the address 145 West 85<sup>th</sup> Street, New York, New York. There are also checks listing the name A & Z Corp. with the address 635 West 46<sup>th</sup> Street, New York, New York. Notwithstanding the different names listed (preprinted) on the checks, petitioner has not disputed that all of the bank accounts were his accounts.

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<sup>1</sup> The audit was commenced as the result of a referral from the Division’s Tax Enforcement section following petitioner’s guilty plea and incarceration on a one-year sentence based on two counts of substantial underreporting of income tax and three counts of offering a false instrument for filing in the first degree. The record does not identify the time periods covered by the guilty pleas to the specified counts, or the period of incarceration served by petitioner.

On April 20, 1998, the Division issued to petitioner a separate Statement of Personal Income Tax Audit Changes for each of the six years at issue. Each statement, consisting of three pages, is premised on the results of the Division's audit and each sets forth the Division's calculation of additional New York State and New York City personal income tax due for each of the years at issue. These statements set forth the amounts of income petitioner is alleged to have failed to report for each year, and each is premised on the assertion that petitioner was properly taxable as a resident of New York State and City. Review of these statements provides the following information:

<b>ITEM</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>
INCOME PER RETURN	\$1,965	\$2,157	\$2,759	\$2,856	\$5,238	\$22,822
UNREPORTED RECEIPTS	352,103	221,058	161,101	280,849	835,972	48,381.25
UNREPORTED INTEREST	13,008	13,896	6,954	131	222	20
(SUBSTANTIATED EXPENSES)	0	(3,000)	(10,700)	(44,997)	(2,205)	0
CORRECTED INCOME	367,076	234,111	161,114	248,839	839,227	71,223.25
(STANDARD DEDUCTION)	(6,000)	(4,750)	(4,750)	(6,000)	(6,000)	(6,600)
TAXABLE INCOME	361,076	229,361	156,364	242,839	833,227	64,623.25
STATE TAX	28,075.99	18,062.18	12,313.67	19,123.57	65,616.63	4,617.11
CITY TAX	13,894.07	9,972.50	6,176.83	10,573.62	36,904.92	2,657.20
(PAYMENTS & CREDITS)	0	0	0	0	0	(1,038.00)
TOTAL TAX <sup>2</sup>	<u>41,970.06</u>	<u>28,034.68</u>	<u>19,030.50</u>	<u>29,697.19</u>	<u>102,521.55</u>	<u>6,236.31</u>

Each statement of audit changes indicates the imposition of interest, plus penalties for deficiency due to negligence (Tax Law § 685[b]), failure to pay estimated tax (Tax Law §

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<sup>2</sup> The amounts shown as "total tax" are exclusive of penalty and interest amounts which were also imposed.

685[c]) and substantial understatement of liability (Tax Law § 685[p]). The statements for 1990 and 1992 include the following remarks concerning petitioner:

The above taxpayer filed as a resident of NYS & NYC. He failed to submit adequate records for examination. He underreported his gross receipts and interest income by more than 25% of his reported income. Appropriate penalties were imposed.

The statements for 1991, 1993, 1994 and 1995 include the following remarks concerning petitioner:

The taxpayer failed to submit adequate records for examination. He maintained a permanent place of adobe [sic] in NYC. He failed to submit clear and convincing evidence that he abandoned his NY domicile. Accordingly we held the taxpayer as a domiciliary of NYS & NYC. In the alternative we would hold the taxpayer as a statutory resident of NYS & NYC because he failed to establish that he spent less than 184 days in NYS. In addition, he underreported his gross receipts and interest income by more than 25% of his reported income. Appropriate penalties were imposed.

The Division's audit methodology in this case involved an analysis of petitioner's bank statements for his accounts over the years at issue herein.<sup>3</sup> Essentially, the Division treated all deposits to petitioner's accounts, and all interest earned on such accounts as income potentially subject to tax, unless there was some manner of establishing that such deposits or interest came from a nontaxable source. Thus, the Division reduced such deposit and interest amounts in instances where it was clear that the deposit represented a transfer from another of petitioner's accounts or from a certificate of deposit. Similarly, the Division's auditor reduced such deposit and interest amounts to account for returned (i.e., bounced) checks, and to account for interest earned thereon as well as interest previously earned on certificates of deposit. By this methodology, the Division arrived at net unreported receipts and net unreported interest income

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<sup>3</sup> Review of the Division's work papers reveals that bank statements for certain accounts were not furnished for a few periods in early 1990 and for several periods in 1995.

for each of the years in issue. After reducing such amounts by reported adjusted gross income for each year, and by business expenses substantiated by petitioner during the course of the audit, the Division arrived at total underreported income subject to tax for each of the years in issue (*see*, above).

On June 22, 1998, the Division issued to petitioner a Notice of Deficiency asserting additional New York State and New York City personal income tax due for the years 1990 through 1995 in the aggregate amount of \$227,490.29, plus penalties and interest. This notice was issued on the basis of the Division's audit and the calculations set forth in the statements of audit changes, as detailed above.<sup>4</sup>

Petitioner challenged the Notice of Deficiency by requesting a conciliation conference with the Division's Bureau of Conciliation and Mediation Services ("BCMS"). A conciliation conference was held on May 5, 1999 and, by a subsequent Conciliation Order (CMS No. 170488) dated September 24, 1999, the Notice of Deficiency was sustained in full. Petitioner continued his challenge by filing a petition with the Division of Tax Appeals.

Petitioner challenges the Division's audit and its results on two fronts. First, petitioner maintains that he was a resident of New Jersey during the subject years and was not properly taxable as a resident of New York State or New York City either on the basis of domicile or as a statutory resident as defined. Second, petitioner alleges that adjustments to the Division's audit results should be made, in addition to those allowed by the auditor at the time of audit, in reduction of the amount of income subject to tax. Specifically, petitioner seeks reduction

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<sup>4</sup> Petitioner executed two consent documents, one pertaining to 1990 and one pertaining to 1991 through 1994, pursuant to which a deficiency of additional tax, penalty and interest for such years could be asserted at any time on or before April 15, 1999.

adjustments for mortgage interest paid, real estate taxes paid, interaccount transfer deposits not offset by corresponding deductions from the transfer account, nontaxable source deposits from Egyptian bank accounts and from matured certificates of deposits, bank charges for maintaining the accounts, and additional deductions for business expenses paid by check. These additional requested adjustments and the resulting admitted amount of unreported taxable income, per petitioner, are summarized as follows:<sup>5</sup>

<u>ITEM</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
INCOME PER AUDIT	\$361,076	\$229,361	\$156,364	\$242,839	\$833,227	\$ 64,623.25
MORTGAGE INTEREST	(18,970)	(20,074)	(20,092)	(14,623)	0	0
ACCOUNT TRANSFERS	(98,000)	(9,423)	(16,776)	(18,500)	(402,250)	0
BANK CHARGES	(600)	(600)	(600)	(600)	(600)	0
BUSINESS EXPENSES	(127,800)	(101,546)	(66,435)	(132,447)	(213,771)	0
RETURNED CHECKS	<u>0</u>	<u>0</u>	<u>0</u>	<u>(30,796)</u>	<u>( 31,929)</u>	<u>0</u>
TAXABLE INCOME	<u>\$115,707</u>	<u>\$ 97,718</u>	<u>\$ 52,462</u>	<u>\$ 64,473</u>	<u>\$182,472</u>	<u>\$ 64,623.25</u>

At hearing, the Division conceded that petitioner is entitled to the claimed deduction for mortgage interest paid for the years 1990 through 1993, and admitted that petitioner, through the presentation of bank mortgage interest statements, has substantiated the dollar amount of such interest paid. Accordingly, the Division agrees that petitioner's taxable income per audit may be reduced by the amount of mortgage interest paid as shown above (*see*, Internal Revenue Code

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<sup>5</sup> As the chart shows, petitioner has raised no challenge to the auditor's calculations and seeks no additional reductions for the year 1995. In addition, while petitioner's documentary submission at hearing includes evidence of real estate taxes paid for certain years, his claim for adjustment based thereon was not specified until his post-hearing brief. Hence, such claim is not presented in the chart, but is set forth below.

["IRC"] § 163[a]), subject to the statutory income limitation percentage pertaining to itemized deductions (*see*, IRC § 68), if any, with respect to such deduction.

Neither petitioner, nor any other witnesses on his behalf, appeared or gave testimony at the hearing held in this matter. Rather, petitioner challenges the Division's notice based on statements made at hearing by his attorney, on affidavits made by petitioner and by his father, and on certain documents including canceled checks, real estate deeds and mortgage interest statements.

Petitioner operated a business as a food concessionaire, apparently through a number of hot dog carts, in Manhattan during the years in issue. As noted, petitioner maintained a number of different bank accounts and submitted at hearing, in two bound volumes, photocopies of several hundred checks from these accounts. As set forth above, in addition to petitioner's name and the address 145 West 85<sup>th</sup> Street in the preprinted address section of the checks for one of the accounts, the name Abdel M. Ibrahim and the same address appear in the same area on the checks for another account. Further, the name A & Z, Inc. and the address 635 West 46<sup>th</sup> Street appear in the preprinted address section of the checks for another account. The relationship of these names to petitioner and to these accounts was not detailed in the record by petitioner.

It is undisputed that petitioner used his accounts to pay both business expenses and personal expenses, and review of the checks reveals many different payees. A number of checks are made payable to cash, while others are apparently in payment of rent, mortgage expense, telephone expense and utility expense. These latter checks are payable to New York entities (e.g., Con. Edison, New York Telephone, etc.) and to New Jersey entities (New Jersey Bell, etc.). Many checks are made payable to individuals whose identity and relationship to petitioner, if any,

is not discussed or disclosed in the record. Still other checks are made payable to what would appear to be various vendors, including Shofar Kosher Foods, M & T Pretzel, Coca Cola, Joyva, and Sage Enterprises. Finally, a large number of checks, as photocopied, are not legible at all, or are illegible as to payee or dollar amount.

Petitioner's claim for additional business expenses in reduction of income is based on the foregoing checks. On many of the checks there appears a jagged line or "squiggle." These lines were allegedly affixed by petitioner's wife, who allegedly served as the bookkeeper for petitioner's concessionaire business, upon her review of the checks in reconstructing petitioner's business versus personal expenditures in connection with the audit and ensuing proceedings. Petitioner's position is that those checks which include a squiggle line represent checks paid for business expenses, apparently including food purchases, business rent and utility expenses, licensing expenses, and the like, which should be allowed in reduction of the amount of additional income determined on audit. The record does not include any business books, including receipts or expense logs, or any invoices for any purchases by petitioner's business, and there is no claim that such books, invoices or other records with respect thereto exist.

Petitioner's claim for a reduction of income for bank charges in the amount of \$600.00 per year represents petitioner's estimate of a "reasonable amount" for such expenses, accompanied by the assertion that the bank in fact charged petitioner much more than \$600.00 per year for these accounts. The record does not include any specification of the actual amount of bank charges incurred nor, notwithstanding that the accounts were used for both personal and business expenses, any showing of any allocation between business related charges and personal expenses.



Petitioner's claim for reduction based on interaccount transfers is premised on the assertion that certain deposits to his accounts resulted from withdrawals from other accounts, or represented deposits from bank accounts maintained by petitioner in Egypt, or were deposits of the proceeds of matured certificates of deposit. Petitioner submitted a number of "customer advice" slips listing transfers from one account to another. Review of the audit work papers reveals that in a number of instances the auditor clearly allowed credit for interaccount transfers. However, for the balance of the claimed transfers, the individual dollar amounts and the particular dates on the transfer slips do not match the dates and the dollar amounts listed on the audit work papers. That is, the audit work papers reflect aggregate deposits for the successive monthly periods covered by the bank statements rather than listing every deposit individually whether by transfer or otherwise. While in a few instances, there are deposits in dollar amounts which are within a few thousand dollars of the amounts shown on the transfer slips, there is no means by which the amounts can be reconciled with the evidence offered in the record by petitioner. That is, petitioner did not offer bank statements which might have identified the individual transfers and allowed for comparison of the customer advice slips thereto and to the deposits and reductions allowed by the Division on audit. In addition, there are no bank statements from Egyptian banks from which the alleged source of certain deposits to petitioner's accounts might be confirmed.

The same lack of any clear explanation or means of tying or confirming petitioner's claimed individual deposit amounts, other than those identified in the audit work papers, to the audit results occurs with respect to claimed deposits from matured certificates of deposit. As an illustrative example, there is a one-page hand-written work paper submitted by petitioner entitled

Certificates of Deposit on which is listed, *inter alia*, a certificate of deposit (No. 1614636) issued June 15, 1989. The work paper states that this certificate, in the amount of \$24,000.00, was rolled over at six month intervals and was allegedly transferred on March 13, 1992 to account number 402933. In comparison, the auditor's work papers show cumulative deposits to account number 402933 for the period February 15, 1992 through March 13, 1992, in the aggregate amount of \$32,221.92. The record contains neither a deposit slip confirming the \$24,000.00 transfer and deposit, nor the bank statement for such period which would list the individual deposits including, presumably, the claimed \$24,000.00 deposit.

There is no dispute that petitioner and his wife lived in an apartment at 145 West 85<sup>th</sup> Street in Manhattan until at least 1989. On June 27, 1989, petitioner purchased a house located at 228 Palisade Avenue, Jersey City, New Jersey. Invoices in the record reflect the purchase, on May 23, 1989, of furniture, including sofas, beds, mattresses and the like from Palmer Furniture Company, and the purchase, on May 26, 1989, of appliances, including a washer and dryer, a refrigerator, a television, and a VCR from Tops Appliance City, Inc. The purchase invoices indicate that delivery was to be made to 228 Palisades Avenue, Jersey City, New Jersey on May 23, 1989 (by Palmer Furniture) and on May 30, 1989 (by Tops Appliance).<sup>6</sup> Utility payments to PS & G, New Jersey Bell and Jersey City Cable TV, as well as mortgage payments on this property to the Washington Saving Bank are reflected among the canceled checks drawn on petitioner's various accounts and included in evidence. Similar payments to New York Bell,

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<sup>6</sup> The deed for this purchase is dated June 27, 1989. However, a September 17, 1992 Notice of Mortgage Adjustment from Washington Savings Bank indicates, with respect to the mortgaged property at 228 Palisade Avenue, Jersey City, New Jersey, that the mortgage/deed of trust for such property was dated October 28, 1987. The significance, if any, of such earlier mortgage/deed of trust date, and of the delivery of furniture and appliances to the premises prior to the June 27, 1989 purchase date, is not explained in the record.

Consolidated Edison, and the like are also reflected among the canceled checks drawn on petitioner's various accounts.

Petitioner sold the house at 228 Palisade Avenue to Christ Hospital on March 25, 1994. The deed and a release executed in connection with this transfer list petitioner's address as 120 Palisade Avenue, Jersey City, New Jersey. Petitioner claims his post-sale (and current) address as 210 Ege Avenue, Jersey City, New Jersey. Petitioner submitted multiple copies of certain tax returns in evidence. These documents indicate the following addresses for petitioner:

<b><u>Year and Return</u></b>	<b><u>Address</u></b>
1990-New York State	145 West 85 <sup>th</sup> Street, NYC
1991-Federal	228 Palisade Ave., Jersey City
1991-New York State	228 Palisade Ave., Jersey City
1992-Federal	401 West 47 <sup>th</sup> Street, NYC
1993-Federal	120 Palisade Ave., Jersey City
1993-New York State	120 Palisade Ave., Jersey City
1993-New Jersey	120 Palisade Ave., Jersey City
1994-Federal	210 Ege Avenue, Jersey City
1994-New Jersey	210 Ege Avenue, Jersey City

In addition to the mortgage interest deduction claimed by petitioner and agreed to by the Division at hearing (subject to the statutory income limitation percentage), petitioner also claimed, by brief, a deduction for real estate taxes he paid on the 228 Palisade Avenue premises. Washington Savings Bank annual escrow statements showing the amount of annual mortgage interest and real estate taxes paid, via escrow, indicate that petitioner paid real estate taxes in the amounts of \$8,448.25 for 1990, \$8,645.65 for 1991 and \$9,160.30 for 1992. Petitioner's post-hearing brief lists an estimated \$9,000.00 amount for 1993. No confirming bank escrow statement was submitted for 1993. No claim of real estate tax paid is made for either 1994 or 1995.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge noted that there are two bases upon which a taxpayer may be subjected to tax as a resident of New York State and City, and both are at issue here. The Administrative Law Judge explained that the first, or domicile basis, turns largely on the concept of an individual's "home." The second, or "statutory" resident basis, requires two conditions to be met for resident tax status: (1) the maintenance of a permanent place of abode in the State and City and (2) physical presence in the State and City on more than 183 days during a given taxable year.

The Administrative Law Judge first addressed the issue of whether petitioner was a domiciliary of New York City. The Administrative Law Judge found that although petitioner purchased a house in Jersey City, New Jersey prior to the years in issue, he offered nothing more than an affidavit that he moved to New Jersey, and his father's affidavit that petitioner's apartment in New York City was thereafter occupied by petitioner's father and brother. The Administrative Law Judge noted that the record provides no information concerning the New Jersey house, its size or amenities or, most critically, petitioner's intent with respect to its purchase and occupancy. The Administrative Law Judge pointed out that the evidence of petitioner's furniture and appliance purchases for this house did not establish petitioner's intent to make it his permanent home, or establish that it was not a "second home" or, for that matter, that it was not a rental property. The Administrative Law Judge also noted the lack of any evidence that any personal "near and dear" items such as artwork, heirlooms, photographs, etc., moved from New York to New Jersey in connection with the purchase and occupancy of the house. Neither petitioner nor his wife appeared at the hearing to testify concerning their intent in

purchasing the New Jersey house. Petitioner filed tax returns for 1990 and 1992 as a resident. The Administrative Law Judge noted that these, as well as all of the other returns filed by petitioner for the years in issue, even by petitioner's own recalculation, vastly understated his income. The Administrative Law Judge viewed as questionable any claim that the 1990 and 1992 returns were simply erroneous in listing petitioner as a New York resident.

The balance of the evidence on the issue of domicile and residence consisted largely of various documents, including real estate tax bills, water bills, motor vehicle registrations, and the like which were addressed to petitioner in New Jersey. The Administrative Law Judge did not view it as surprising or unusual that tax and water bills would be sent to the property address to which they pertain, and, the Administrative Law Judge noted, automobile registrations are certainly not dispositive on the issue of domicile. In contrast, the Administrative Law Judge pointed out, a number of other documents, including petitioner's checks, show the New York City address for petitioner, and indicate that numerous payments for utilities, telephone and the like were made to both New York and New Jersey vendors. Further, it is undisputed that petitioner was domiciled at 145 West 85<sup>th</sup> Street in Manhattan before he purchased the house in New Jersey. The Administrative Law Judge found no evidence that petitioner terminated any lease for this New York apartment nor any allegation that he ceased paying the expenses associated with this apartment. In fact, the Administrative Law Judge found that the checks in the record lead to the opposite conclusion. The Administrative Law Judge noted the confusing state of the record, since there was no testimony or cross examination provided or available from which any questions could be resolved. In particular, the Administrative Law Judge noted there was no clear evidence that petitioner moved from New York to New Jersey with the requisite

intent to make his permanent home in New Jersey. Accordingly, the Administrative Law Judge concluded that petitioner failed to carry his burden to establish that he changed his domicile from New York City to New Jersey.

The Administrative Law Judge next turned to the issue of statutory residence. There are, the Administrative Law Judge pointed out, two conditions which, if met, subject a nondomiciliary to tax as a resident. These conditions are maintenance of a permanent place of abode in the City and physical presence in the City on more than 183 days in any given year.

The Administrative Law Judge found that the apartment at 145 West 85<sup>th</sup> Street was a permanent place of abode. The Administrative Law Judge stated that the apartment was admittedly petitioner's domicile prior to the years in question. The issue for the Administrative Law Judge, however, was whether the apartment constituted a permanent place of abode for petitioner during the years in question.

The Administrative Law Judge referred for guidance to the decision of the Tax Appeals Tribunal in *Matter of Evans* (Tax Appeals Tribunal, June 18, 1992, *confirmed Matter of Evans v. Tax Appeals Tribunal*, 199 AD2d 840, 606 NYS2d 404), where the Tribunal was asked to decide the meaning of the phrase "maintains a permanent place of abode." The Tribunal noted that the term "maintain" is not defined in the pertinent statute or regulation and, accordingly, examined the legislative history of the statutory language, concluding:

[g]iven . . . the lack of any definitional specificity on the part of the Legislature, we presume that the Legislature intended . . . to use the word in a practical way that did not limit its meaning to a particular usage so that the provision might apply to the "variety of circumstances" inherent to this subject matter. In our view, one maintains a place of abode by doing whatever is necessary to continue one's living arrangements in a particular dwelling place. This would include making contributions to the household, in money or otherwise (*Matter of Evans, supra*).

A few years prior to its decision in *Evans*, the Tribunal, in applying the phrase “permanently maintained” stated: “[t]he operative words of the regulation are ‘permanently maintained’ which the petitioner does through his continued ownership of the house . . .” (*Matter of Feldman*, Tax Appeals Tribunal, December 15, 1988).

The Administrative Law Judge noted that the checks in evidence point to a conclusion that petitioner maintained the apartment. It appeared that he paid the bills associated with the premises, with no evidence or allegation of payment by anyone else including petitioner’s father or brother. Further, the Administrative Law Judge noted, there is no evidence or claim that petitioner was in any manner precluded from access to or use of the apartment. Given the lack of any testimony at hearing, the Administrative Law Judge found that the actual use of the apartment by petitioner had not been shown. The Administrative Law Judge concluded that the unsworn assertions made at hearing by petitioner’s representative, as well as the limited and conclusory statements in the affidavits of petitioner and his father, were insufficient to establish that the apartment was not a permanent place of abode maintained by petitioner during the years in issue.

The Administrative Law Judge, having concluded that 145 West 85<sup>th</sup> Street was a permanent place of abode maintained by petitioner, next addressed the question of whether petitioner was present in New York City on more than 183 days in any of the years in issue.

The Administrative Law Judge noted that petitioner offered no evidence, either in written form or via testimony, concerning the number of days he spent in or out of New York during the subject years. The Administrative Law Judge concluded that petitioner’s maintenance of a permanent place of abode in New York City, coupled with the lack of any evidence indicating

that petitioner was not in New York on any given days during the subject years, leaves petitioner unable to prevail on the issue of his status as a taxable resident.

Next, the Administrative Law Judge addressed petitioner's argument that several adjustments should be made to reduce the amount of additional income determined upon audit. As noted, the Division agreed that petitioner is entitled to a reduction, subject to the statutory income limitation percentage, for the mortgage interest he paid. On the same basis, the Administrative Law Judge found petitioner is entitled to a reduction for the real estate taxes he paid as substantiated in the amounts of \$8,448.25 for 1990, \$8,645.65 for 1991, and \$9,160.30 for 1992, emphasizing that such amounts are subject to the statutory income limitation percentage for itemized deductions, if any. For 1993, petitioner estimated that he paid real estate taxes of \$9,000.00. However, he provided no substantiation of real estate taxes paid in fact for such year, or the amount thereof. Accordingly, the Administrative Law Judge concluded petitioner is not entitled to any reduction for real estate taxes paid for 1993.

The Administrative Law Judge found that petitioner failed to establish that he is entitled to any reductions in addition to those afforded during the course of the audit, plus the adjustments for mortgage interest and real estate taxes discussed above. In this regard, the Administrative Law Judge noted in particular that, except for the canceled checks, no books or records of receipts and expenses of petitioner's business appear to have been maintained. There were no invoices for purchases of food and other items necessary for the operation of petitioner's business. With regard to the checks, the same were written out of a number of accounts and were mixed with personal expenses paid out of the same accounts. The Administrative Law Judge noted that such accounting is inherently unreliable. Petitioner's use of multiple accounts



to pay both business and personal expenses, with multiple interaccount fund transfers, and deposits of presumably taxable business income commingled with allegedly nontaxable deposits from certificates of deposit and money from bank accounts in Egypt, left an unintelligible record of cash flow. The Administrative Law Judge found that petitioner's choice to use this manner of "accounting," coupled with the lack of any books of account or invoices, must weigh against petitioner. The Administrative Law Judge determined that petitioner's presentation at hearing consisted mainly of the same items provided to the auditor, and afforded no basis upon which to make any further adjustments to the audit results.

Petitioner offered no arguments or evidence in support of reduction or abatement of penalties imposed and, therefore, the penalties were sustained by the Administrative Law Judge. Moreover, the Administrative Law Judge pointed out that even if all of the adjustments sought by petitioner were allowed, there would remain, even by petitioner's calculations, a very large understatement of income and of tax liability in comparison to the amounts reported.

#### ***ARGUMENTS ON EXCEPTION***

Petitioner takes exception to that part of the determination of the Administrative Law Judge which concluded he failed to produce adequate records and failed to produce clear and convincing evidence regarding his claimed change in domicile. Petitioner also objects to the conclusion that he failed to produce evidence that he was not a statutory resident during the subject years, and that he substantially underreported his income during the subject years.

***OPINION***

We affirm the determination of the Administrative Law Judge for the reasons stated therein. Petitioner has offered no new arguments, supported by this record, which would justify our modifying the determination of the Administrative Law Judge in any respect.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Abdelaziz El-Tersli is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Abdelaziz El-Tersli is granted to the extent indicated in Conclusion of Law “K” of the Administrative Law Judge’s determination pertaining to reductions for mortgage interest and real estate taxes, but in all other respects is denied; and
4. The Notice of Deficiency dated June 22, 1998, as modified in accordance with paragraph “3” above, together with penalties and interest, is sustained.

DATED: Troy, New York  
January 23, 2003

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

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