STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
DREW AND LORI CASS	:	DECISION DTA NO. 818802
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1995, 1996 and 1997.	:	

Petitioners Drew and Lori Cass, 12 Lily Drive, Centereach, New York 11720, filed an exception to the determination of the Administrative Law Judge issued on July 24, 2003. Petitioners appeared by William J. Bernstein, Esq. The Division of Taxation appeared by Mark F. Volk, Esq. (Jennifer L. Hink, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter in lieu of a formal brief in opposition. Petitioners' request for oral argument was denied.

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

ISSUE

Whether petitioners have substantiated certain claimed business deductions and the reduction of additional rental income for the years 1995, 1996 and 1997.

FINDINGS OF FACT

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

On June 15, 1998, the Division of Taxation ("Division") sent to petitioners, Drew and Lori Cass, an appointment letter advising that an audit of their records for the years 1995, 1996 and 1997 was to be performed and requested that they provide to the auditors the following records: copies of Federal and New York State income tax returns; all books, records, worksheet schedules and other documents pertinent to the preparation of their tax returns, including a general ledger, disbursements journal, payroll ledger, and a sales receipts journal; bank records including business and personal savings and checking account statements and canceled checks for the period of the audit; all credit card statements covering the audit period; and documentation supporting business and itemized deductions claimed.

At the initial meeting with the auditor, petitioners presented bank statements for the year 1995, documents which supported claimed telephone expenses, some of the claimed supply expenses and some of the other claimed miscellaneous expenses. The auditor was at first concerned with the year 1997, where petitioners reported approximately $500,000.00 in sales and cost of goods sold in the amount of $290,000.00. The auditor wanted to review petitioners' actual expense documents and actual income supporting statements, but was never supplied with either. Petitioners' accountant at the time informed the auditor that petitioners did not keep any formal accounting books.

During the course of the audit, petitioners executed three consents extending the period of limitation for assessment of personal income tax under Article 22 of the Tax Law, effectively extending the period of assessment for the years 1995 and 1996 to April 15, 2001.

On March 13, 2000, the Division issued to petitioners a Notice of Deficiency of personal income tax due in the amount of $46,092.07, plus penalties pursuant to Tax Law § 685(b) (negligence) and Tax Law § 685(p) (substantial understatement of liability) and interest.

During the hearing which commenced on October 18, 2002, petitioners presented additional receipts and documentation which had not previously been provided to the auditor during the audit. At the conclusion of the first day of the hearing, the matter was continued to December 11, 2002 and petitioners were provided with additional time by the administrative law judge, prior to the continued date of the hearing, to submit receipts and substantiation documentation to the Division in an auditable form.

The Division's auditor reviewed the additional documentation provided by petitioners at the first day of hearing and recomputed the amount of tax due. Based upon the additional documentation which petitioners provided, the auditor allowed additional Schedule C expenses. There remains at issue subcontractor expenses and advertising expenses claimed as business deductions by petitioners for three separate business entities which each reported income on a Federal Schedule C during the audit period and Freon storage expenses claimed by petitioners as a business deduction on the Schedule C for the business Wholesale Sales for the year 1997. In addition, the Division increased petitioners' rental income from property located in the Town of Bay Shore, claiming that the amount of income indicated by petitioners was too low.

The amounts at issue, and the business they relate to, for each of the categories mentioned above, are as follows:

Year	Expense	Business	Amount Disallowed
1995	Subcontractor	Active Contracting	$10,400.00
1995	Subcontractor	Active Appliance Repairs	$9,515.00
1995	Advertising	Active Appliance Repairs	$8,950.00
1995	Subcontractor	Active Appliance Sales	$17,515.00

1995	Advertising	Active Appliance Sales	$15,625.00
1996	Subcontractor	Active Contracting	$15,400.00
1996	Subcontractor	Active Appliance Repairs	$15,691.00
1996	Advertising	Active Appliance Repairs	$10,400.00
1996	Subcontractor	Active Appliance Sales	$19,500.00
1996	Advertising	Active Appliance Sales	$16,120.00
1997	Subcontractor	Active Contracting	$16,950.00
1997	Subcontractor	Active Appliance Repairs	$20,122.00
1997	Advertising	Active Appliance Repairs	$31,050.00
1997	Subcontractor	Active Appliance Sales	$10,400.00
1997	Advertising	Active Appliance Sales	$31,050.00
1997	Freon Storage	Wholesale Sales	$20,250.00

In addition, the Division increased petitioners' income relating to the Bay Shore rental property by $10,000.00 for each of the years at issue.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

At the outset, the Administrative Law Judge pointed out that a properly issued Notice of Deficiency is presumed to be correct and the taxpayer has the burden of demonstrating that the assessment is incorrect (***see, Matter of Leogrande v. Tax Appeals Tribunal***, 187 AD2d 768, 589 NYS2d 383, ***lv denied*** 81 NY2d 704, 595 NYS2d 398; ***see also***, Tax Law § 689[e]). The question presented to the Administrative Law Judge was whether petitioners sustained their

burden of showing that they are entitled to additional Schedule C expense deductions over and above those already allowed by the Division and a reduction in the Schedule E rental income from the amount determined by the Division.

The Administrative Law Judge considered each item in question for the years at issue separately.

SUBCONTRACTORS - The Administrative Law Judge found that petitioners did not prove entitlement to the claimed subcontractor expenses. The signed statements of total yearly receipts from the subcontractors, which were not notarized, were not contemporaneous with the claimed expense payments. All of the subcontractors' tax returns indicated that the only income earned by the subcontractors was that paid by petitioners. No receipts showing daily or weekly payments were provided, and there is no source documentation that would establish that these payments were actually made.

ADVERTISING - The Administrative Law Judge found that petitioners also had not proven entitlement to the claimed advertising expenses. The copy of the check for $41,937.00 claimed to have been submitted to Verizon in December 1997 for Yellow Pages advertising is unreadable for the most part. Therefore, it did not substantiate the information contained in the Verizon letter showing receipt of a check for $41,397.00[1] for Yellow Pages publications for 1998. The Administrative Law Judge noted that the amount on the check, which is one of the few items that could be read, matched neither the amount of advertising expenses claimed by petitioners on their tax returns, nor the amount claimed by petitioners at the hearing.

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[1] No explanation was provided as to the difference between the amount shown on the check and the amount in the Verizon letter.

FREON STORAGE - The Administrative Law Judge also found that petitioners had not established entitlement to the claimed expenses for the Freon storage. The Administrative Law Judge noted that no checks or other source documentation were offered as proof that the payments were actually made.

RENTAL INCOME - The Administrative Law Judge found that petitioners were entitled to the reduction in rental income of $10,000.00 for each of the years at issue.

The Administrative Law Judge granted the petition to the extent set forth above with respect to rental income, but in all other respects the petition was denied.

ARGUMENTS ON EXCEPTION

Petitioners' arguments on exception are the same as those presented below. Petitioners continue to claim the unnotarized statements from petitioners' subcontractors coupled with the submission of the returns of those contractors is sufficient to prove entitlement to deductions for those contractor payments. According to petitioners, all payments were made in cash.

Petitioners also disagree with the Administrative Law Judge's finding that the check to Verizon was not legible and that the differences between the amount on the check and the amount shown on the Verizon letter make them both unreliable as evidence.

Petitioners also take exception to the Administrative Law Judge's finding that they failed to establish their entitlement to the claimed expenses for Freon storage. Again, petitioners claim that all payments here were also made in cash.

The Division continues to argue that petitioners have failed to substantiate the expenses at issue. With regard to subcontracting expenses, the Division states that the statements provided are summary in nature, that the business should have receipts showing daily or weekly payments and that there is no source documentation establishing that these payments were actually made.

The Division also maintains that the check and letter submitted to establish the advertising expenses are insufficient to establish entitlement to the deduction as the memo on the check states it was for the years 1998 and 1999 and the amount on the check matches neither the amounts claimed on the returns nor the amount of $30,000.00 now claimed by petitioners to be advertising expenses paid in the years at issue. As for the Freon storage expense, the Division again noted that no checks or other source documentation were provided establishing that the payments were made.

OPINION

We affirm the determination of the Administrative Law Judge. The Administrative Law Judge has thoroughly and correctly addressed each of the arguments presented by the parties. Petitioners have offered no arguments on exception, and no evidence below, that 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 Drew and Lori Cass is denied;

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

3. The petition of Drew and Lori Cass is granted to the extent indicated in conclusion of law "E" of the Administrative Law Judge's determination, but is otherwise denied; and

4. The Notice of Deficiency issued to petitioners on March 13, 2000, subject to the Division of Taxation's adjustments due to reductions in rental income, is sustained.

DATED: Troy, New York
June 10, 2004

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

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