

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JOSEPH AND MARLENE SCHNELL	:	DECISION
	:	DTA NO. 819765
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1999 and 2000.	:	

Petitioners Joseph and Marlene Schnell, 139 Sumpwams Avenue, Babylon, New York 11702-3712, filed an exception to the determination of the Administrative Law Judge issued on November 24, 2004. Petitioners appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Justine Clarke Caplan, Esq., of counsel).

Petitioners filed a brief in support of their exception and the Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioners filed a reply brief. Petitioners did not request oral argument.

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

ISSUE

Whether the Division of Taxation properly disallowed petitioners' claimed bad debt deductions for the years at issue.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact “8” which has been modified. The Administrative Law Judge’s findings of fact and the modified finding of fact are set forth below.

On December 26, 2002, following an audit, the Division of Taxation (“Division”) issued to petitioners, Joseph and Marlene Schnell, a Notice of Deficiency which asserted \$2,408.33 in additional income tax due, plus penalty and interest, for the years 1999 and 2000. The notice resulted from the Division’s disallowance of expenses claimed on Federal schedule C’s filed with petitioners’ joint New York resident income tax returns (Form IT-201) for the years at issue.

Petitioners’ 1999 return reports a business loss of \$32,200.00. The schedule C filed with the return reports that such loss arose from the operation of sole proprietorship known as Barad Plumbing Corp. Petitioner Joseph Schnell is listed as the proprietor of this business. The reported business address is petitioners’ home address. The 1999 schedule C reports zero gross receipts for the business and the following expenses: \$1,200.00 advertising, \$2,500.00 office expense, and \$28,500.00 bad debts.

Petitioners’ 2000 return reports a business loss of \$33,700.00. The schedule C filed with this return also reports that such loss arose from petitioner Joseph Schnell’s sole proprietorship known as Barad Plumbing Corp. The 2000 schedule C reports zero gross receipts for the business and the following expenses: \$1,700.00 advertising, \$2,000.00 office expense, and \$30,000.00 bad debts.

Both the 1999 and 2000 schedule C's report that the business used a cash accounting method.

On audit, the Division disallowed the claimed expenses for advertising, office expense and bad debts on both the 1999 and 2000 schedule C's and recomputed petitioners' tax liability accordingly.

As indicated in the audit report filed by the Division's auditor and included with the Division's motion papers, petitioner Joseph Schnell advised the auditor that the bad debts claimed on the schedule C's for the years at issue were never reported as income.

Petitioners' petition also states that the business never had cash receipts or income.

We modify finding of fact "8" of the Administrative Law Judge's determination to read as follows:

On August 20, 2004, the Division brought a motion seeking summary determination pursuant to sections 3000.5 and 3000.9 of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner Joseph Schnell filed an affirmation in opposition to the Division's motion on September 1, 2004 which asserted that the Division's motion should be denied because at a hearing petitioners would provide documentation and expert testimony as proof that petitioners' schedule C was in agreement with various Internal Revenue Code sections, regulations and publications; New York State Tax Law § 612 and Form IT-201 for the years 1999 and 2000. Petitioner Schnell's affirmation made no specific factual allegations regarding the claimed bad debts or whether the amount of such claimed bad debts was previously reported as income.¹

In its motion papers, the Division conceded the issue of the claimed expenses for advertising and office expense and thus agreed to allow such claimed deductions for the years at issue.

¹We modified this finding of fact to more accurately reflect the record.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that summary determination may be granted if, upon all the papers and proof submitted, the Administrative Law Judge finds that no material and triable issue of fact is presented and a determination can be issued as a matter of law in favor of any party. The Administrative Law Judge recited applicable case law regarding the evidentiary requirements necessary for a motion for summary determination to be granted.

The Administrative Law Judge concluded that upon all of the proof presented, there was no material and triable issue of fact presented in this case and the Division was entitled to a determination in its favor as a matter of law.

The Administrative Law Judge pointed out that Internal Revenue Code § 166 permits a bad debt deduction for businesses for any debt which becomes worthless within the taxable year. However, pursuant to Treasury Regulation § 1.166-1[e], such a deduction is allowable only where the income such worthless debt represents has been previously reported and included in income.

Based on the information contained in the Division's audit report and the petition, the Administrative Law Judge found that the amounts claimed as bad debts were not previously reported as income, nor were these amounts reported as income for the business for either of the years at issue. Further, as the business used a cash basis accounting method during the years at issue, it would not normally report income until it was actually received. The Administrative Law Judge found that the Division had made a prima facie showing that the claimed bad debts

were not previously included in petitioners' income. As a matter of law, therefore, the Administrative Law Judge held that such deductions were properly disallowed.

The Administrative Law Judge determined that petitioners' affirmation in opposition to the instant motion consisted of conclusory statements and unsubstantiated assertions and as such was insufficient to defeat the Division's motion. As a result, the Administrative Law Judge denied the petition and sustained the Notice of Deficiency dated December 26, 2002, as modified by allowing the claimed expenses for advertising and office expense for the years at issue.

ARGUMENTS ON EXCEPTION

On exception, petitioners argue that the bad debt deductions taken by them on their 1999 and 2000 federal income tax returns were appropriate. Petitioners maintain that they are entitled to a hearing at which they can present evidence supporting the bad debt deductions for the years at issue.

In opposition, the Division reiterates the arguments presented in support of its motion for summary determination and argues that summary determination was properly granted as petitioners failed to present evidence sufficient to demonstrate that there was an issue of material fact requiring a trial.

OPINION

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 (*see, Matter of Purvin*, Tax Appeals Tribunal, October 9, 1997; *see also, Matter of Schoonover*, Tax Appeals Tribunal, August 15, 1991). As summary judgment is the procedural equivalent of a trial (*see,*

Glick & Dolleck v. Tri-Pac Export Corp., 22 NY2d 439, 293 NYS2d 93), we find this principle equally applicable to attempts to submit additional evidence for consideration subsequent to the granting of a motion for summary determination. As a result, we reject petitioners' attempt to introduce additional evidence into the record after the determination of the Division's motion for summary determination had been issued by the Administrative Law Judge (*see, Matter of Moore*, Tax Appeals Tribunal, June 28, 2001).

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

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Joseph and Marlene Schnell is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Joseph and Marlene Schnell is denied; and
4. The Notice of Deficiency dated December 26, 2002, as modified by Finding of Fact "9"

of the Administrative Law Judge's determination, is sustained.

DATED: Troy, New York
March 17, 2005

/s/Donald C. DeWitt

Donald C. DeWitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner