

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
ROBERT CHAMBERLIN : DETERMINATION  
for Redetermination of a deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law and under Chapter 17 of Title 11 :  
of the Administrative Code of the City of New :  
York for the Year 1983. :

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Petitioner Robert Chamberlin, 81 Columbia Street, #3C, New York, New York 10002, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and under Chapter 17 of Title 11 of the Administrative Code of the City of New York for the year 1983 (File No. 806195).

A hearing was held before Nigel G. Wright, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on May 10, 1990 at 1:15 P.M. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Carroll R. Jenkins, Esq., of counsel).

ISSUE

Whether an amount of \$66,017.70 was properly deducted as a worthless debt on petitioner's income tax return. The Division of Taxation argues that this sum was "salary, to compensate him for salary lost" and not part of a court settlement where he was awarded.."damages" and should be income.<sup>1</sup>

FINDINGS OF FACT

1.(a) Petitioner, a high school teacher, was engaged in a labor strike in 1975 against the

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<sup>1</sup>Certain concessions made at the hearing by the Division of Taxation concerning 1982 and 1984 matters are not properly part of this determination.

City of New York.

1.(b) Petitioner was fired from his job for his strike activity.

2. Litigation concerning petitioner's rights resulted in awards being granted in 1980 and 1981 by the Voluntary Labor Arbitration Tribunal of the American Arbitration Association.

3. A memo of the Board of Education computes amounts due petitioner as a result of these awards. Petitioner has computed interest and salary due totalling \$66,017.00, on these amounts according to his understanding of the rationale for those awards. The Division of Taxation at the hearing has agreed that there is nothing wrong with petitioner's rationale.

4. In 1983, petitioner received an amount from the Board of Education as back pay under the awards. To do so, however, petitioner had to sign a waiver of his rights to the amounts here in dispute. This waiver, the Division of Taxation agrees, was signed under duress.

5.(a) Mr. Chamberlin filed a 1983 resident income tax return showing wages of \$83,138.64, certain other income, interest income of \$269.81, other income of \$13,621.03, for a total income of \$97,029.48. His deductions were interest expense of \$1,557.76 and miscellaneous expenses of \$89,429.85. His taxable income was \$6,241.87.

5.(b) The miscellaneous expense were union dues of \$291.12, a contribution to his nephew of \$5,000.00, a worthless debt from his ex-wife of \$4,000.00, a worthless debt from his employer of \$66,017.70, a "reserve" for litigation expenses with his employer of \$13,621.03 and legal fees of \$500.00.

5.(c) The petitioner, at the hearing, conceded that the amounts of \$5,000.00 and \$13,621.03 were not deductible.

6. In later years, petitioner claims that he has included in income amounts received from the City identified as being interest and which would be the interest for which a loss is claimed in this case. I can make no finding on this assertion.

7.(a) A Notice of Deficiency was issued on February 11, 1987, for personal income tax for the year 1983 in the amount of \$13,005.85 plus interest of \$3,721.44 for a total amount due

of \$16,727.29. This accepts petitioner's gross income of \$97,029.48 as reported, but allows only a standard deduction of \$2,500.00 which with an exemption of \$800.00 results in taxable income of \$93,729.48. The reason stated for the deficiency is the disallowance of miscellaneous deductions. In lieu of other itemized deductions, the standard deduction was granted.

7.(b) The Division of Taxation, at hearing, has not contested the miscellaneous deductions of \$4,000.00 for the bad debt nor the \$500.00 in legal fees nor the deduction of the interest expense of \$1,557.76. The only item in dispute is now the \$66,017.70 worthless debt of the Board of Education.

8. The documents in this case contain no statements as to the basis upon which the Division relies for its disallowance of the claimed worthless debt deduction. As noted earlier, the Statement of Audit Changes dated November 4, 1986, states only that "miscellaneous deductions of \$88,638.73 are disallowed". The Division's Answer, dated January 12, 1990, alleges in item 9 that "the Department of Taxation and Finance disallowed miscellaneous deductions claimed by petitioner in the total amount of \$88,638.73". Finally, at the hearing held on May 10, 1990, the Division was specifically requested to articulate why the miscellaneous deductions were disallowed (transcript p. 10); however, the only explanation given was that if it was found "that Mr. Chamberlin's income for 1983 was part of a court settlement where he was awarded, it was in the terms of 'damages,' then he would not have to pay tax on damages, but if it was income--if it was salary to compensate him for salary lost then it would be income." The Division has declined to file a brief in this case.

#### CONCLUSIONS OF LAW

A. The deduction claimed will be granted. The rationale for the denial of the deduction given by the Division of Taxation in response to petitioner's claims must be rejected. That rationale stated to be whether the sum of \$66,017.70 was salary, "to compensate...for salary lost." This rationale appears to be directed not to the deduction of the \$66,017.70 in question, but to the inclusion in income of the amounts of back pay paid to petitioner by the Board of

Education in 1983. These amounts have, however, already been included in petitioner's return and any issue as to them is academic. There is no claim for refund here.

B. No other rationale for the denial of the deduction has been stated by the Division of Taxation. I will decline to consider this case on any other ground. As an administrative law judge in the Division of Tax Appeals, I must exercise a judgement independent of the Division of Taxation. The files and arguments of that Division do not come before me automatically and it is the parties who must present such material (Matter of Scharff, Tax Appeals Tribunal, October 4, 1990). Generally, as in this case, where a trial is conducted assuming certain positions of the parties, then additional positions advanced for the first time after trial need not be considered in the decision (Aero Rental v. Comm'r., 64 TC 331, 338; Riss v. Comm'r., 57 TC 469, 474). Even where arguments are made at a hearing but where, again as in this case, the arguments are not pursued in a brief, such arguments may be considered to have been withdrawn (Arwood Corporation v. Comm'r., T.C. Memo 1971-2, 30 TCM [CCH] 6, 25 [issue relating to Mercasts 1960 return]). In this case, the Division of Taxation has declined to file a brief at all and has not made an effective argument in any other way. Where a party who is not represented by a professional neglects to make the best of his case, the administrative law judge traditionally has a duty, so far as he is able, to consider the case most thoroughly from his point of view. However, as in this case, where the party is represented by an attorney, that attorney has a duty to make an effective argument (Klein v. Comm'r., 6 BTA 617, 623; People v. Wright, 22 AD2d 754). When confronted with a similar failure, the former United States Board of Tax Appeals refused to investigate the case on behalf of the taxing authority. It said:

"Whether we are to assume that the respondent concedes or that he leaves the question to be investigated by the Board without the assistance of counsel is not clear. We reject the latter alternative. It is the duty of counsel to ascertain the considerations and authorities supporting one side or the other and of the Board to judge" (Klein v. Comm'r., 6 BTA 617, 623)

Similarly, a district attorney as a respondent on an appeal has a duty to file a brief (In the Matter of Faith "AA", 139 AD2d 22). Clearly to do otherwise would either relinquish the role of an independent judge and adopt the role of the attorney for the Division of Taxation or at least to

appear to the general public to do so (which some would think to be just as bad). The United States Tax Court has said that the requirement that the parties comply with their respective obligations must take precedence even over "our general desire that our decisions reflect the correct result" (Horvath v. Comm'r., TC Memo 1987-605, 54 T.C.M. [CCH] 1274, 1275).

C. The petition is granted and the deficiency is cancelled.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE