

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JAMES F. BRADLEY	:	DETERMINATION
	:	DTA NO. 816198
for Redetermination of a Deficiency or for Refund of	:	
New York State and City of New York Personal Income	:	
Taxes under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York for	:	
the Years 1990 and 1991.	:	

Petitioner, James F. Bradley, 375 Southend Avenue, 28R, New York, New York 10280, filed a petition for redetermination of a deficiency or for refund of New York State and City of New York personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 1990 and 1991.

On August 25, 1998 and August 26, 1998, respectively, petitioner, appearing *pro se*, and the Division of Taxation, appearing by Terrence M. Boyle, Esq. (Herbert M. Friedman, Jr., Esq., of counsel) consented to have the controversy determined on submission without a hearing. All documentary evidence and briefs were due to be submitted by January 25, 1999, which date began the six-month period for the issuance of this determination. After due consideration of the record, Brian L. Friedman, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied portions of petitioner's claimed alimony deductions for the years at issue.

FINDINGS OF FACT

1. The Division of Taxation (“Division”) was notified by the Internal Revenue Service (“IRS”) that it had disallowed the claimed alimony deduction of James F. Bradley (“petitioner”) in the amount of \$36,000.00 for each of the years 1990 and 1991. As a result thereof, the Division also disallowed petitioner’s claimed alimony deduction for these years.

2. On August 4, 1995, the Division issued a Notice of Additional Tax Due to petitioner which asserted New York State personal income tax due of \$2,835.00, plus penalty and interest, and City of New York personal income tax due of \$1,407.60, plus penalty and interest, for the year 1990. The Notice of Additional Tax Due advised petitioner that the assertion of additional tax due was based upon the information received from the IRS which disallowed his deduction for alimony payments, and that this bill was issued because petitioner had failed to report the Federal changes to the Division as is required by the Tax Law.¹

3. On June 24, 1996, the Division issued a Notice of Additional Tax Due to petitioner which asserted New York State personal income tax due in the amount of \$2,763.00, plus penalty and interest, and City of New York personal income tax due of \$1,516.00, plus penalty and interest, for the year 1991. The notice contained the same explanation as the one issued for the year 1990 (*see*, Finding of Fact “2”).²

4. Petitioner filed a Request for Conciliation Conference, but in lieu of a conference he opted to have the matter decided by correspondence. By letter dated May 8, 1997, petitioner’s former representative, George R. Sullivan, CPA, sent to the conciliation conferee a copy of a

¹ According to the advocate’s comments on the conciliation conference held subsequent thereto, the Notice of Additional Tax Due progressed to a Notice and Demand on September 29, 1995. This Notice and Demand is not a part of the record.

² According to the advocate’s comments on the conciliation conference held subsequent thereto, the Notice of Additional Tax Due progressed to a Notice and Demand on August 19, 1996. The Notice and Demand is not a part of the record.

supplemental agreement, dated July 1, 1987, which modified the original separation agreement of May 20, 1983 between petitioner and his wife, Denise M. Bradley. Along with this supplemental agreement, Mr. Sullivan also enclosed copies of canceled checks which he contended represented payment of alimony pursuant to the terms of the agreement.

5. The supplemental agreement required petitioner to pay the sum of \$1,500.00 per month to Denise M. Bradley for her support and maintenance and to pay the sum of \$1,500.00 per month for the support of the child of the marriage. Upon the emancipation of the child, petitioner was to pay, in lieu of the \$1,500.00 per month previously noted, the sum of \$2,000.00 per month, provided Denise M. Bradley had not remarried. The record does not disclose the age of the child of the parties nor does it indicate that the child became emancipated during the years at issue.

6. For the year 1990, copies of checks dated June 11, 1990 and September 17, 1990, each in the amount of \$3,000.00, were submitted to the conciliation conferee. For the year 1991, copies of checks dated December 2, 1991 and December 29, 1991, each in the amount of \$2,500.00, were provided to the conciliation conferee.³

7. The Report of Tax Conferences prepared by the conciliation conferee indicated that, based upon petitioner's submission of these checks (*see*, Finding of Fact "6"), a \$6,000.00 alimony deduction for 1990 and a \$5,000.00 alimony deduction for 1991 had been substantiated. Accordingly, a Conciliation Order dated September 26, 1997 (CMS No. 157019) was issued by the Division's Bureau of Conciliation and Mediation Services which reduced petitioner's tax

³ Also submitted by petitioner's former representative were four checks issued on various dates during 1992. These checks, totaling \$10,800.00, were issued in a year subsequent to the period at issue and were, therefore, not considered by the conferee.

deficiency from \$4,242.60 to \$3,742.13, plus penalty and interest, for 1990 and from \$4,279.00 to \$3,665.00, plus penalty and interest, for 1991.⁴

8. In lieu of a brief, petitioner submitted a letter and copies of additional checks which the letter states were “checks to Denise Bradley representing payment for alimony and child support for years 1990 and 1991.” For 1990, petitioner submitted checks dated October 12th and November 12th, each in the sum of \$3,000.00. For 1991, petitioner submitted checks dated January 18th, February 10th, March 9th and October 22nd, each in the sum of \$3,000.00.

9. Petitioner also submitted a letter, dated January 25, 1999, in lieu of a reply brief. Along with this letter was a portion of what appears to be an affidavit in support of an order to show cause filed by Denise M. Bradley against petitioner.⁵ There is no indication as to the date of the motion. While “arrears” are mentioned in the affidavit, it is unclear as to the amount of arrears, whether the arrears were for child support, alimony or both and the period for which the arrears allegedly existed.

CONCLUSIONS OF LAW

A. Tax Law § 659 requires a taxpayer to report Federal changes to the Division within 90 days after the final determination of such changes (a similar provision, Administrative Code of the City of New York § 11-1759, is applicable to City of New York personal income tax). There is no evidence in the record that petitioner complied with the aforesaid provision of the Tax Law.

⁴ These revised deficiencies represent the total of New York State and City of New York personal income taxes which the Division asserts to be due from petitioner for each of the years at issue.

⁵ Only one page of this affidavit was submitted by petitioner. This page does not contain a signature of Denise M. Bradley. In addition, the page submitted by petitioner contains only selected paragraphs of the affidavit; several numbered paragraphs were omitted.

Accordingly, it was proper for the Division to issue a notice and demand to petitioner for each of the years at issue (*see*, Tax Law § 681[e][1]).

B. With certain exceptions not relevant in this matter, Tax Law § 689(e) provides that, with respect to all matters arising out of Article 22 of the Tax Law, the burden of proof shall be upon the petitioner (*see also*, Administrative Code § 11-1789[e]).

While petitioner did submit copies of additional checks issued by him to Denise M. Bradley during the years at issue, there is an absence of credible evidence to substantiate which portion, if any, of these checks was for payment of alimony. There is no notation on the checks that the payments were to be applied to petitioner's alimony obligation. It is certainly possible that the checks were payments on petitioner's child support obligations. As indicated in Finding of Fact "8", petitioner's letter brief states that the checks represented payment for alimony *and* child support. Moreover, since the purported affidavit of Denise M. Bradley (*see*, Finding of Fact "9") refers to arrears without indicating whether such arrears were for alimony, child support or both, it is unclear, without testimony or sworn affidavits, whether these checks were issued to satisfy petitioner's alimony obligation, thereby entitling him to an income tax deduction therefor.

As the Division has correctly noted in its letter brief dated December 29, 1998, absent supporting testimony or affidavits setting forth the reason for the issuance of these checks, it cannot be found that petitioner has sustained his burden of proving that any or all of these checks were payments of alimony. Despite the fact that the conciliation conferee elected to treat other such checks as substantiation of a portion of the alimony deduction claimed (*see*, Findings of Fact "6" and "7"), this Administrative Law Judge cannot find that the checks, standing alone,

constitute adequate proof of petitioner's entitlement to more of a deduction for the payment of alimony than has already been granted by the conciliation conferee.

C. The petition of James F. Bradley is granted to the extent indicated in Finding of Fact "7"; the Division of Taxation is hereby directed to modify notices and demands issued September 29, 1995 and August 19, 1996 accordingly; and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York
June 24, 1999

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE