

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition  
of  
**RAYMOND AND GLYNIS EBLE**  
for Redetermination of Deficiencies or for Refund of New  
York State Personal Income Tax under Article 22 of the  
Tax Law for the Years 1995 and 1996.

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DETERMINATION  
DTA NO. 817710

Petitioners, Raymond and Glynis Eble, 71 Ridgehaven Drive, Ridge, New York 11961, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1995 and 1996.

A small claims hearing was held before James Hoefler, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York on May 7, 2002 at 12:15 P.M. Petitioners appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Fred Havenbrook).

Since neither party herein elected to reserve time to file briefs, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

***ISSUE***

Whether petitioners have adduced sufficient evidence to adequately substantiate all or a portion of the itemized deductions claimed on their 1995 and 1996 income tax returns for cash and noncash contributions.

***FINDINGS OF FACT***

1. Petitioners herein, Raymond and Glynis Eble, filed a timely New York State resident income tax return for 1995 reporting thereon New York adjusted gross income of \$67,796.00 and subtracting therefrom New York itemized deductions of \$22,336.00. Petitioners also filed a timely New York State resident income tax return for the 1996 tax year reporting New York adjusted gross income of \$69,126.00 and New York itemized deductions of \$22,871.00.

2. The Division of Taxation (“Division”) conducted an audit of petitioners’ 1995 and 1996 income tax returns requesting that they submit documentation to support the itemized deductions claimed on each return. Petitioners complied with the Division’s request, and after reviewing the documentation submitted, the Division determined that petitioners had adequately substantiated only a portion of the itemized deductions claimed on their 1995 and 1996 income tax returns. The following table sets forth the amounts claimed, allowed and disallowed:

	<b><u>1995</u></b>		
<u>Deduction</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
Taxes	\$9,349.00	\$5,391.00	\$3,958.00
Interest	11,464.00	7,652.00	3,812.00
Contributions	1,617.00	-0-	1,617.00
Miscellaneous deductions	<u>3,267.00</u>	<u>-0-</u>	<u>3,267.00</u>
Subtotal	25,697.00	13,043.00	<u>\$12,654.00</u>
Less: State & local income taxes	<u>3,361.00</u>	<u>3,361.00</u>	
Total	<u>\$22,336.00</u>	<u>\$9,682.00</u>	

	<b><u>1996</u></b>		
<u>Deduction</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
Taxes	\$9,348.00	\$7,465.00	\$1,883.00
Interest	11,369.00	11,369.00	-0-
Contributions	1,994.00	-0-	1,994.00
Miscellaneous deductions	<u>3,486.00</u>	<u>-0-</u>	<u>3,486.00</u>
Subtotal	26,197.00	\$18,834.00	<u>\$7,363.00</u>
Less: State & local income taxes	<u>3,326.00</u>	<u>3,326.00</u>	
Total	<u>\$22,871.00</u>	<u>\$15,508.00</u>	

3. On September 21, 1998, the Division issued two notices of deficiency to petitioners, one for each year at issue. The Notice of Deficiency for the 1995 tax year allowed the standard deduction of \$10,800.00 since substantiated New York itemized deductions of \$9,682.00 were less than the allowable standard deduction. This adjustment increased reported taxable income by \$11,536.00 (\$22,336.00 claimed less \$10,800.00 allowable standard deduction) and resulted in additional New York State personal income tax due of \$898.00. The Notice of Deficiency for the 1996 tax year disallowed \$7,363.00 of claimed itemized deductions (\$22,871.00 claimed less \$15,508.00 allowed), which adjustment produced additional tax due of \$523.00. In addition to the tax due, each notice of deficiency also asserted that interest and negligence penalty was due.

4. Petitioners timely protested both notices of deficiency by filing a request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services ("BCMS"). A conciliation conference was held by BCMS, and on February 18, 2000, the conferee issued a Conciliation Order wherein the tax due for 1996 was reduced from \$523.00 to \$498.00 as the result of the allowance of charitable contributions in the amount of \$354.00. The Conciliation Order sustained the tax due for the 1995 tax year as asserted in the Notice of Deficiency.<sup>1</sup>

5. At the hearing held herein, the parties stipulated that for the 1995 tax year petitioners were entitled to an additional allowance for real estate taxes in the sum of \$2,041.00, thus increasing the itemized deductions for taxes from \$2,030.00 to \$4,071.00. It was also stipulated by the parties that the allowable itemized deduction for interest for 1995 was to be increased by \$3,811.00, from \$7,652.00 to \$11,463.00 and that allowable charitable contributions for 1995

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<sup>1</sup> The Division also allowed charitable contributions of \$354.00 for the 1995 tax year; however, even with this additional allowance substantiated itemized deductions for said year did not exceed the allowable standard deduction.

totaled \$354.00, the same amount as allowed for the 1996 tax year. Petitioners conceded that their allowable miscellaneous itemized deductions for both years at issue did not exceed the 2% of Federal adjusted gross income limitation and therefore this adjustment is not in dispute. The only item left in dispute in this proceeding concerns whether petitioners are entitled to itemized deductions for charitable contributions in excess of the \$354.00 allowed each year by the Division.

6. On Federal Schedule A - Itemized Deductions, petitioners claimed the following deductions for cash and noncash donations:

	<u>1995</u>	<u>1996</u>
Gifts by cash or check	\$1,249.00	\$1,625.00
Gifts other than by cash or check	<u>368.00</u>	<u>369.00</u>
Total	\$1,617.00	\$1,994.00

At the hearing held herein petitioners assert that they made the following deductible charitable contributions for each of the years at issue:

	<u>1995</u>	<u>1996</u>
Cash to St. Marks Church	\$936.00	\$988.00
Miscellaneous cash donations	417.00	544.00
Cash to Copiague Fire Department	250.00	200.00
Noncash donation of clothes, etc.	1,200.00	1,450.00
Use of car for charitable purposes (5,904 miles x \$.12)	<u>708.00</u>	<u>708.00</u>
Total	\$3,511.00	\$3,890.00

7. Petitioners were registered members of St. Marks Roman Catholic Church for the years at issue. Petitioners maintain that they attend church every week, contribute \$15.00 in cash each week and do not use the envelope system for contributions as they do not wish to be compared to other parishioners. Other than a statement from the church indicating that petitioners were registered parishioners, no documentary evidence was adduced to support that contributions were made or the dollar amount of the contributions.

Petitioners also assert that they made cash contributions to numerous organizations such as Boy Scouts, Girl Scouts, American Heart Association, American Lung Association, ELIH, Marian Shrine, Big Brothers Big Sisters of L.I. and Missionary Oblates of Mary Immaculate. Once again, no documentary evidence was presented to substantiate that any contributions were made to these organizations, nor does the record disclose the specific amount purportedly donated to each organization.

8. To support the claimed noncash contributions petitioners submitted statements from The Opportunity Shop indicating that for 1995 a total of nine bags of clothing was donated along with one box of books and three boxes of toys. Petitioners placed a value of \$1,200.00 on the these items. For the 1996 tax year ten bags of clothing, one couch, two chairs, two tables, one motorized Barbie Jeep and five boxes of toys were donated. Petitioners determined that the value of these items totaled \$1,450.00.

9. Petitioner Raymond Eble joined the Copiague Fire Department as a volunteer fire fighter in 1984. In June 1990 petitioners moved to their current address in Ridge, New York, a distance of 41 miles from the Copiague Fire Department. Although it was no longer feasible for Mr. Eble to respond to emergency calls because of the distance between his residence and the fire station, he remained active in the Copiague Fire Department as an honorary member of the department. In this capacity Mr. Eble performed committee work, was a fire safety training officer, was involved in training emergency medical technicians and attended monthly general meetings. Mr. Eble asserts that he attended at least six meetings per month at the fire station and is entitled to a contribution deduction of \$708.00 for the mileage he traveled back and forth to the fire station (6 trips per month x 12 months x 82 miles round trip x \$.12 per mile for charitable purposes). The Division has allowed one-half of the amount claimed by petitioners.

10. Petitioners have also submitted an “Official Receipt” for each of the years at issue which indicates donations of \$250.00 for 1995 and \$200.00 for 1996 were made to the Copiague Fire Department’s Subscription Fund. Petitioners maintain that these contributions were made in cash.

***CONCLUSIONS OF LAW***

A. Tax Law § 689(e) places the burden of proof on petitioners to show that the notices of deficiency issued by the Division are erroneous. In the instant matter petitioners have adduced sufficient evidence to establish that they made cash contributions to the Copiague Fire Department’s Subscription Fund in the amount of \$250.00 for 1995 and \$200.00 for 1996. Petitioners have also met their burden of proof to show that they are entitled to a charitable contribution deduction of \$708.00 each year for the mileage traveled by Mr. Eble between his residence and the Copiague Fire Department.

B. The evidence provided with respect to the cash donations to St. Marks Roman Catholic Church and other charitable organizations is less compelling. Although petitioners have established that they were registered as parishioners at St. Marks Roman Catholic Church for 1995 and 1996, there is no documentary evidence to support that donations were made or the amount of the donations. With respect to the alleged cash donations made to other charitable organizations, there is no breakdown as to the specific amount given to each organization nor is there any documentary evidence to support that donations were made. Petitioners chose not to utilize the envelope system for the contributions purportedly made to St. Marks Roman Catholic Church and they also elected to make these, and other contributions, by cash. Petitioners have thus put themselves in a position of being unable to support with documentary evidence any of these contributions. However, considering petitioner Raymond Eble’s testimony regarding cash

contributions, coupled with the fact that it is undisputed that petitioners were registered parishioners of St. Marks Roman Catholic Church, I believe that it is fair and reasonable to conclude that petitioners made total cash donations of \$400.00 each year to the church and other charitable organizations.

C. Finally, turning to noncash contributions, although I do not doubt that the items listed on the statement from The Opportunity Shop were in fact donated, I believe that the value assigned by petitioners to the items donated was inflated. The record contains no evidence as to each item's original cost, its age or its condition at the time the donation was made. Therefore, I believe that it is fair and reasonable to allow a deduction of \$250.00 each year for the noncash items donated to The Opportunity Shop.

D. Petitioners' allowable New York itemized deductions for the two years at issue are computed as follows:

	<u>1995</u>	<u>1996</u>
Deductions allowed per audit	\$9,682.00	\$15,508.00
Deductions allowed per BCMS	354.00	354.00
Additional taxes per stipulation	2,041.00	-0-
Additional interest per stipulation	3,811.00	-0-
Charitable miles per determination	354.00	354.00
Cash donation to fire department	250.00	200.00
Other cash donations	400.00	400.00
Noncash donations	<u>250.00</u>	<u>250.00</u>
Total	\$17,142.00	\$17,066.00

E. The petition of Raymond and Glynis Eble is granted to the extent indicated in Conclusions of Law "A", "B", "C" and "D"; the Division is directed to recompute the tax

asserted due in the two notices of deficiency dated September 21, 1998 to be consistent with the determination issued herein; and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York  
June 13, 2002

/s/ James Hoefler  
PRESIDING OFFICER