

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**GLENN AND LORI MARTUCCI** : DETERMINATION  
for Redetermination of Deficiencies or for Refund of New : DTA NO. 817748  
York State Personal Income Tax under Article 22 of the :  
Tax Law for the Years 1995 and 1996. :

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Petitioners, Glenn and Lori Martucci, 49 Preston Lane, Syosset, New York 11791, 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 Arthur Johnson, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York, on September 12, 2001 at 10:00 A.M. with additional evidence to be submitted by October 12, 2001. Petitioners appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Fred Havenbrook).

***ISSUE***

Whether petitioners presented sufficient evidence to adequately substantiate their claimed itemized deductions for contributions and job and miscellaneous expenses.

***FINDINGS OF FACT***

1. Petitioners, Glenn and Lori Martucci, timely filed joint New York State resident income tax returns for the 1995 and 1996 tax years reporting thereon New York adjusted gross income of

\$73,516.00 and \$87,379.00, respectively. The returns also reported New York itemized deductions of \$20,771.00 for 1995 and \$18,174.00 for 1996.

2. On February 10, 1998, the Division of Taxation (“Division”) corresponded with petitioners requesting that they submit documentation to verify the itemized deductions claimed on their tax returns for the years 1995 and 1996. After reviewing the documents submitted by petitioners’ representative, the Division concluded that petitioners failed to adequately substantiate a portion of the claimed itemized deductions for taxes, contributions and job expenses in 1995. For 1996, the Division determined that petitioners failed to substantiate a portion of the contributions they claimed and all of the claimed itemized deductions for job and other miscellaneous expenses. Accordingly, the Division disallowed the aforementioned itemized deductions as unsubstantiated and on June 25, 1998 and June 29, 1998, it issued to petitioners a separate Statement of Proposed Audit Changes for each of the years at issue. The Statement of Proposed Audit Changes for 1995 reduced petitioners’ itemized deductions from the \$20,771.00 claimed on the return to the verified amount of \$13,790.00 and asserted additional New York State tax due of \$581.00, plus penalty and interest. For the 1996 tax year, the Statement of Proposed Audit Changes adjusted the claimed itemized deductions from \$18,174.00 to \$10,933.00. The Division allowed the standard deduction of \$12,350.00 in lieu of the adjusted itemized deductions and asserted a New York State tax due of \$414.96, plus penalty and interest. On both statements, the penalty was asserted pursuant to Tax Law § 685(b) for negligence.

3. On December 21, 1998, the Division issued two notices of deficiency to petitioners, one for each year, asserting the tax due based on the above computations, plus penalty and interest.

4. Petitioners timely protested both notices of deficiency by filing a Request For Conciliation Conference with the Division's Bureau of Conciliation and Mediation Services ("BCMS"). The controversy could not be resolved with BCMS and on February 25, 2000, it issued a Conciliation Order sustaining the notices of deficiency. The order indicated that the deficiencies have been paid in full. Petitioners, in response to the Conciliation Order, timely filed a petition with the Division of Tax Appeals and this proceeding ensued.

4. The only items in dispute in this proceeding concern the claimed deductions for contributions and job and miscellaneous expenses.

5. With respect to contributions, petitioners submitted a letter dated December 8, 1999 on the letterhead of John Thomas Roesch. The letter was signed by Mary B. Petersen, Administrative Assistant, verifying that petitioners were registered members of Syosset Community Church during the years 1995 and 1996. Petitioners submitted a second letter also on the letterhead of John Thomas Roesch and signed by Ms. Petersen. This letter verified that petitioners contributed \$300.00 to the church in 1995 and \$100.00 in 1996.

In order to substantiate noncash contributions, petitioners submitted receipts from Big Brothers Big Sisters of Long Island indicating that they donated three bags of clothing in 1995 having a value of \$175.00. For 1996, the receipts listed donated items of clothing, a microwave oven and sheets with a value of \$150.00. Petitioners also submitted receipts from National Headquarters Vietnam Veterans of America. The receipts indicated clothing donations of \$75.00 for 1995 and \$150.00 for 1996.

6. For the years at issue, Glenn Martucci was employed by Chase Manhattan Mortgage Corporation as an outside mortgage loan officer. He was responsible for originating residential mortgage loans and was required to meet with applicants, realtors, attorneys and accountants. He

was responsible to pay the expenses for mileage, phones, meals and entertainment and such expenses were not reimbursed by his employer. To support his claimed job expenses for 1995, Mr. Martucci had previously submitted to the Division a log with a summary worksheet which listed expenses incurred for mileage, meals, local transit and publications. The Division allowed the claimed deduction for mileage expenses in its computation of tax due but did not allow any deduction for meals, local transit and publications. Based on a further review of the 1995 log, the Division's representative conceded that Mr. Martucci was entitled to a deduction of \$1,074.00 for meals; \$170.00 for local transit and \$190.00 for publications. At the hearing, Mr. Martucci submitted a log and summary worksheet of expenses for 1996. After review by the Division's representative, he agreed to allow the following deductions for job expenses in 1996: mileage-\$2,995.22, meals-\$805.00, local transit-\$166.00 and publications-\$218.00.

Mr. Martucci also submitted an invoice for the purchase of a computer for \$1,700.00. The computer was used 80 percent of the time for business purposes.

#### ***SUMMARY OF PETITIONERS' POSITION***

7. Petitioner Glenn Martucci testified that he and his wife and family made cash contributions of on average of \$20.00 per week to Syosset Community Church. The cash contributions were in addition to the amounts verified by the church. Mr. Martucci also testified that the receipts provided by Big Brothers Big Sisters of Long Island and National Headquarters Vietnam Veterans of America accurately represented the value of the donated items.

Petitioners argued that the testimony of Glen Martucci is sufficient proof to allow cash contributions to Syosset Community Church of \$1,000 in each year and noncash contributions of \$250.00 for 1995 and \$300.00 for 1996.

***CONCLUSIONS OF LAW***

A. Tax Law § 689(e) places the burden of proof on petitioners to show that the deficiencies issued to them are erroneous.

With respect to cash contributions, the only form of substantiation offered by petitioners was the testimony of Glen Martucci. In this case, Mr. Martucci's credible testimony established that petitioners made cash contributions exceeding the deductions allowed by the Division for contributions. What has not been substantiated is the dollar amount of said contributions. I believe that it is fair and equitable (Tax Law § 2012) to allow petitioners an additional \$500.00 in cash contributions to Syosset Community Church for each year. The Division on audit had allowed deductions for contributions totaling \$225.00 for 1995 and \$805.00 for 1996.

With respect to noncash contributions, the receipts from Big Brothers Big Sisters of Long Island and National Headquarters Vietnam Veterans of America together with the testimony of Glen Martucci is sufficient evidence to allow deductions of \$250.00 in 1995 and \$300.00 in 1996.

B. Turning to petitioners' claimed deductions for job and miscellaneous expenses, the Division conceded that petitioners' verified allowable deductions (before application of the 2% of Federal adjusted gross income limitation) were \$3,322.00 for 1995 and \$4,374.22 for 1996 (Finding of Fact "6"). Petitioners also substantiated that they are entitled to a deduction of \$1,360.00 (\$1,700 x 80%) for the computer used in Mr. Martucci's business.

C. The petition of Glen and Lori Martucci is granted to the extent indicated in Conclusions of Law "A" and "B". The Division of Taxation is hereby directed to modify the notices of deficiency issued December 21, 1998 consistent with the conclusions rendered herein.

The petition is in all other respects denied and the notices of deficiency, as modified herein, are sustained.

DATED: Troy, New York  
December 27, 2001

/s/ Arthur Johnson  
PRESIDING OFFICER