

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ROBERT MCGRATH : DETERMINATION
for Redetermination of Deficiencies or for Refund of New : DTA NO. 818085
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 1995 and 1996. :
:

Petitioner, Robert McGrath, 650-62 Newbridge Road, East Meadow, New York 11554, 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 Hofer, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York on May 24, 2001 at 2:45 P.M. Petitioner appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Maryanne Witkowski and Elizabeth Smeltzer).

The final brief in this matter was due to be filed by August 17, 2001 and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

Whether petitioner has adduced sufficient evidence to adequately substantiate all or a portion of the itemized deductions claimed on his 1995 and 1996 income tax returns for contributions and miscellaneous deductions.

FINDINGS OF FACT

1. Petitioner herein, Robert McGrath, filed a timely New York State resident income tax return for 1995 reporting thereon New York adjusted gross income of \$67,445.00 and subtracting therefrom New York itemized deductions of \$19,560.00. Petitioner also filed a timely New York State resident income tax return for the 1996 tax year reporting New York adjusted gross income of \$26,002.00 and New York itemized deductions of \$22,364.00.

2. On some unknown date prior to July 20, 1998, the Division of Taxation (“Division”) requested that petitioner submit documentation to support the itemized deductions as claimed on his 1995 and 1996 income tax returns. Petitioner complied with the Division’s request and after reviewing the documentation submitted the Division determined that petitioner had adequately substantiated only a portion of the itemized deductions claimed on his 1995 and 1996 income tax returns. The following table sets forth the itemized deductions claimed, allowed and disallowed:

| | <u>1995</u> | | |
|--------------------|-----------------------|-----------------------|--------------------------|
| <u>ITEM</u> | <u>CLAIMED</u> | <u>ALLOWED</u> | <u>DISALLOWED</u> |
| Taxes | \$9,843.00 | \$6,573.00 | \$3,270.00 |
| Interest | 8,167.00 | 8,167.00 | -0- |
| Contributions | 2,286.00 | -0- | 2,286.00 |
| Miscellaneous | <u>2,998.00</u> | <u>-0-</u> | <u>2,998.00</u> |
| Subtotal | 23,294.00 | 14,740.00 | 8,554.00 |
| Less State taxes | <u>3,734.00</u> | <u>3,734.00</u> | <u>-0-</u> |
| Total | \$19,560.00 | \$11,006.00 | \$8,554.00 |

| | <u>1996</u> | | |
|--------------------|-----------------------|-----------------------|--------------------------|
| <u>ITEM</u> | <u>CLAIMED</u> | <u>ALLOWED</u> | <u>DISALLOWED</u> |
| Medical | \$1,488.00 | \$-0- | \$1,488.00 |
| Taxes | 8,345.00 | 3,596.00 | 4,749.00 |
| Interest | 8,584.00 | 5,597.00 | 2,987.00 |
| Contributions | 1,764.00 | -0- | 1,764.00 |
| Miscellaneous | <u>2,857.00</u> | <u>-0-</u> | <u>2,857.00</u> |
| Subtotal | 23,038.00 | 9,193.00 | 13,845.00 |
| Less State taxes | <u>674.00</u> | <u>670.00</u> | <u>(4.00)</u> |
| Total | \$22,364.00 | \$8,523.00 | \$13,841.00 |

3. On July 20, 1998, the Division issued a Notice of Deficiency to petitioner for the 1995 tax year wherein it disallowed \$8,554.00 of claimed itemized deductions (\$19,560 claimed less \$11,006.00 allowed). Said adjustment resulted in additional New York State personal income tax due of \$650.00. The Division issued a second notice of deficiency to petitioner on July 27, 1998 for the 1996 tax year. This notice disallowed \$13,841.00 of claimed itemized deductions (\$22,364.00 claimed less \$8,523.00 allowed) and produced additional tax due for 1996 of \$839.00. In addition to the tax due, each notice of deficiency also asserted that interest and negligence penalty was due.

4. In this proceeding petitioner made no argument and produced no evidence with respect to the Division's disallowance of itemized deductions for medical expenses, taxes and interest. Accordingly, the adjustments to these items are deemed conceded and will not be addressed hereinafter. Petitioner does, however, contest the Division's adjustments to contributions and miscellaneous deductions.

5. Petitioner maintains that he made deductible charitable contributions during each year at issue to the following organizations in the amounts indicated:

| <u>ORGANIZATION</u> | <u>1995</u> | <u>1996</u> | <u>TYPE OF CONTRIBUTION</u> |
|---------------------|---------------|---------------|-----------------------------|
| St. Rafaels Church | \$1,240.00 | \$1,100.00 | Cash |
| St. Vincent DePaul | 409.00 | 329.00 | Donated clothing |
| Aids Drive | 300.00 | -0- | Check |
| Just Say No | 35.00 | -0- | Check |
| Misc. Charities | <u>277.00</u> | <u>335.00</u> | Cash |
| Total | \$2,261.00 | \$1,764.00 | |

Other than the two canceled checks noted above, no documentary or other credible evidence was adduced at the hearing to substantiate that the alleged donations were in fact made, and, if made, the dollar amount of said donations.

6. Petitioner was employed at NatWest Bank, NA in the metropolitan New York City area from 1972 until November 1994, at which time his position was terminated. Petitioner received severance pay from NatWest Bank, NA for the entire 1995 tax year in the sum of \$60,011.25. The severance pay ceased in early 1996 and totaled \$2,968.29. Petitioner was unemployed for the entire 1995 tax year, and for the 1996 tax year he worked as an independent consultant earning wages of \$7,512.50 and reporting \$13,910.00 of net business income. For both the 1995 and 1996 tax years petitioner incurred various expenses associated with his search for full-time employment and the following table sets forth the items and amounts that petitioner asserts were incurred in his job hunting endeavors:

| <u>ITEM</u> | <u>1995</u> | <u>1996</u> |
|--------------|---------------|-------------|
| Stationery | \$145.00 | \$1,146.00 |
| Computer | 2,421.65 | -0- |
| Tolls | 236.50 | 324.75 |
| Mileage | 1,185.65 | 2,022.00 |
| Train/cab | 205.50 | 57.00 |
| Publications | <u>110.00</u> | <u>-0-</u> |
| Total | \$4,304.30 | \$3,549.75 |

7. Petitioner offered in evidence numerous documents and testimony to support claimed miscellaneous deductions for job hunting expenses. With respect to the “Stationery” expenses for 1995 petitioner had a total of 220 job search mailings, while the number totaled 1,738 for the 1996 tax year. Petitioner claims a cost of \$16.98 per 100 mailings for stationery, \$3.99 per 25 mailings for envelopes and \$.32 per mailing for postage. The Division asserts that no deductions should be allowed since petitioner failed to produce receipts to verify the dollar amount of the expenses incurred.

In 1995 petitioner, a single individual, spent \$2,421.65 to purchase a computer from Sears which he used to search for a job on the Internet, conduct research on prospective employers,

prepare his resume and perform other word processing functions related to his search for full-time employment.

To support the amounts claimed for tolls, mileage and train/cab fares petitioner submitted a diary he maintained for each year in question which contained entries identifying the individual or company he met with, the location of the meeting and the transportation expenses incurred to travel to the meeting. The Division notes that no documentary evidence was presented to substantiate the dollar amount of the claimed travel expenses and that, for the 1996 tax year, petitioner claimed \$2,312.00 on Federal Schedule C for travel expenses related to his independent consulting business, thus requiring some distinction between the job search travel expenses and the consulting travel expenses. At the hearing held herein petitioner admitted that the travel expenses shown in the 1996 diary submitted in evidence included the consulting travel expenses as well as the job search travel expenses. Petitioner was granted additional time to address this issue post-hearing, however, no additional evidence was presented.

CONCLUSIONS OF LAW

A. Tax Law § 689(e) places the burden of proof on petitioner to show that the notices of deficiency herein are erroneous. Addressing charitable contributions first, I conclude that petitioner has adequately substantiated by canceled checks that he made contributions totaling \$335.00 for the 1995 tax year. However, I find petitioner's testimony regarding alleged cash and noncash charitable contributions, standing alone, insufficient to adequately and properly substantiate said items and therefore conclude that the Division properly disallowed these items. Petitioner was able to substantiate with documentary evidence only a small percentage of his claimed deductions for contributions and it must also be noted that he significantly overstated his allowable deductions for medical expenses, interest and real estate taxes for both years at issue.

Given this scenario, I am not inclined to accept petitioner's testimony as adequate proof of cash contributions. The same reasoning applies equally to petitioner's claimed deductions for noncash contributions.

B. Turning next to the claimed miscellaneous deductions for job hunting expenses, I conclude that for the 1995 tax year petitioner, through documentary evidence and testimony, has adequately substantiated deductible expenses totaling \$4,304.30. After applying the 2% of Federal adjusted gross income limitation, allowable miscellaneous deductions for 1995 total \$2,941.22 ($\$4,304.30 - \$1,363.08$ [$\$68,154.00 \times 2\%$]).

For the 1996 tax year, petitioner is entitled to deduct only the stationery expenses of \$1,146.00. The claimed miscellaneous expenses for tolls, mileage and train/cab fares for 1996 cannot be allowed as the record fails to provide a breakdown as to what portion of the documented transportation expenses applied to petitioner's consulting activities and the amount which was associated with his job hunting activities. For the 1996 tax year petitioner is allowed to deduct miscellaneous expenses of \$621.18 ($\$1,146.00 - \524.82 [$\$26,241.00 \times 2\%$]).

C. The petition of Robert McGrath is granted to the extent indicated in Conclusions of Law "A" and "B"; the Division is directed to recompute the notices of deficiency dated July 20, 1998 and July 27, 1998 consistent with the conclusions reached herein and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York
November 8, 2001

/s/ James Hoefler
PRESIDING OFFICER