

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
THOMAS AND LENORE BACCARELLA : DETERMINATION
for Redetermination of Deficiencies or for Refund of New : DTA NO. 818146
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 1995 and 1996. :

Petitioners, Thomas and Lenore Baccarella, 2486 Natta Boulevard, Bellmore, New York 11710, 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 Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York, on May 7, 2002 at 10:30 A.M. Petitioners appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Marianne Witkowski).

The parties were allowed time to file briefs and to submit additional documentation in this matter. The final brief was due by August 7, 2002, and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

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

FINDINGS OF FACT

1. On February 26, 1996, petitioners, Thomas and Lenore Baccarella, filed a joint New York State personal income tax return for the year 1995 whereon they reported New York adjusted gross income of \$64,722.00. On this return petitioners claimed New York itemized deductions totaling \$27,393.00. Their New York State tax liability was computed thereon to be \$2,138.00.

2. On February 10, 1997, petitioners filed a joint New York State personal income tax return for the year 1996 whereon they reported New York adjusted gross income of \$75,145.00. On this return petitioners claimed New York itemized deductions totaling \$25,805.00. Their New York State tax liability was computed thereon to be \$2,921.00.

3. As the result of an audit, the Division of Taxation ("Division") issued a separate Notice of Deficiency to petitioners for each of the years 1995 and 1996 on September 11, 1998. For 1995, the notice asserted additional New York State personal income tax of \$884.00, plus penalties of \$133.84 and interest of \$179.29, less a reported payment or credit of \$350.00, for a total due of \$847.13. For 1996, the notice asserted additional New York State personal income tax of \$719.00, plus penalties of \$76.26 and interest of \$80.64, less a reported payment or credit of \$350.00, for a total due of \$525.90. The penalties asserted each year were for negligence pursuant to Tax Law § 685(b)(1) and (2). The deficiencies for both years at issue were the result of the Division's adjustments to petitioners' claimed New York itemized deductions based on documentation submitted. These adjustments are set forth below:

1995

| Deduction | Claimed | Allowed | Disallowed |
|----------------------------------|--------------------|--------------------|--------------------|
| Taxes | \$9,967.00 | \$ 7,491.00 | \$2,476.00 |
| Interest | 11,723.00 | 11,723.00 | -0- |
| Contributions | 2,393.00 | -0- | 2,393.00 |
| Miscellaneous Deductions | <u>6,531.00</u> | <u>-0-</u> | <u>6,531.00</u> |
| Subtotal | \$30,614.00 | \$19,214.00 | <u>\$11,400.00</u> |
| Less: State & Local Income Taxes | <u>3,221.00</u> | <u>3,335.00</u> | |
| Total | <u>\$27,393.00</u> | <u>\$15,879.00</u> | |

1996

| Deduction | Claimed | Allowed | Disallowed |
|----------------------------------|--------------------|--------------------|--------------------|
| Taxes | \$10,426.00 | \$8,019.00 | \$2,407.00 |
| Interest | 11,492.00 | 11,492.00 | -0- |
| Contributions | 2,457.00 | -0- | 2,457.00 |
| Miscellaneous Deductions | <u>5,145.00</u> | <u>-0-</u> | <u>5,145.00</u> |
| Subtotal | \$29,520.00 | \$19,511.00 | <u>\$10,009.00</u> |
| Less: State & Local Income Taxes | <u>3,715.00</u> | <u>3,780.00</u> | |
| Total | <u>\$25,805.00</u> | <u>\$15,731.00</u> | |

4. Each Notice of Deficiency explained that the claimed real estate taxes, miscellaneous deductions and the majority of claimed contributions were disallowed due to petitioners' failure to provide documentation. The only claimed deductions specifically addressed in detail in the notices were with respect to alleged contributions of clothing for 1995 and 1996 of \$750.00 and \$925.00, respectively. These claimed contributions were disallowed by the Division based on the following explanation:

Your documentation included a one page letter from the Society of St. Vincent dePaul, dated April 7, 1998, acknowledging the receipt of assorted clothing in their drop bin located at the Sacred Heart Church.

Accompanying the letter from the Society of St. Vincent dePaul was your letter to that organization, listing various items donated in 1995 and 1996.

In your letter to the Society of St. Vincent dePaul you explained that you make drops 4 times a year, as seasons change, each time depositing about 4 bags of clothing and other items. You therefore requested that the Society of St. Vincent dePaul provide you with receipts for \$750.00 and \$925.00 for each year, 1995 and 1996.

Our Department can not accept the documentation as provided. It is not possible for the charitable organization to accurately and reliably acknowledge receipt of non cash contributions in a drop bin for a previous year.

5. Subsequent to the issuance of the notices of deficiency, petitioners filed a Request for Conciliation Conference with the Division's Bureau of Conciliation and Mediation Services. As the result of a conciliation conference held June 6, 2000, the conferee issued a Conciliation Order on August 25, 2000 which denied petitioners' request and sustained both notices of deficiency.

6. On November 15, 2000, petitioners filed a petition for a hearing with the Division of Tax Appeals for the years 1995 and 1996. The petition essentially stated that petitioners incurred real estate taxes, contributions and miscellaneous deductions for which they were not given credit.

7. At the hearing held herein petitioners did not contest the adjustments made to their claimed real estate tax deductions for 1995 and 1996.

8. With respect to petitioners' claimed contributions of \$2,393.00 for 1995 and \$2,457.00 for 1996, the only documentation submitted at the hearing consisted of:

(a) the same documents presented and subsequently rejected during the initial audit with respect to petitioners' alleged gifts of clothing to the Society of St. Vincent dePaul. The

basis for the Divisions rejection was explained in the notices of deficiency (*see*, Finding of Fact “4”), and;

(b) a letter from The Church of Saint Barnabas the Apostle, dated February 8, 1999, stating that “Mr. & Mrs. T. Baccarella have been members of this parish since February 9, 1994.” This letter was submitted to substantiate petitioners’ claim that they gave cash contributions of \$15.00 per week, with larger amounts on holidays, to the aforesaid church.

9. Review of petitioners’ tax returns and wage and tax statements show that they earned total wage income of \$57,929.00 and \$71,379.00 for the years 1995 and 1996, respectively. Said total wage income for each year at issue consisted of several amounts which were derived by petitioners from the following employers:

1995

| Employer | Taxpayer | Wages |
|-----------------------|-----------------|------------------|
| The Lewis Agency LTD | Wife | \$15,806.40 |
| NIA Kornreich LLC | Wife | 10,639.39 |
| J J Kenny Drake, Inc. | Husband | <u>31,428.98</u> |
| Total | | \$57,929.37 |

1996

| Employer | Taxpayer | Wages |
|-------------------------|-----------------|------------------|
| Sterling & Sterling Inc | Wife | \$11,248.17 |
| Hiram Cohen & Sons Inc. | Wife | 27,800.00 |
| J J Kenny Drake, Inc. | Husband | <u>32,330.54</u> |
| Total | | \$71,378.71 |

10. The tax returns show that in addition to the above stated wages, Mr. Baccarella received nonemployee compensation from Barton Limousine Service Corp. of \$3,479.00 and

\$2,675.00, for the years 1995 and 1996, respectively. This income, which was derived from his activities as a limousine driver, was reported on Federal forms 1099-Misc.

11. The tax returns show that in addition to the above stated wages, Mrs. Baccarella received nonemployee compensation from Melalueca Inc. of \$689.83 during the year 1996. This income, which was derived from her activities of selling health and household products at parties and presentations, was reported on a Federal form 1099-Misc. Although it was alleged that Mrs. Baccarella derived income from Melalueca Inc. during 1995 as well, no such income was reported on the 1995 tax return. Petitioners indicated that essentially all of the miscellaneous deductions claimed by them for both 1995 and 1996 were incurred by Mrs. Baccarella in connection with activities her for Melalueca Inc.

12. With respect to the miscellaneous deductions claimed for 1995 and 1996 of \$6,531.00 and \$5,145.00, respectively, petitioners submitted photocopies of various schedules, invoices, receipts and checkbook registers. A cursory review of these documents during the hearing showed them to be, for the most part, undecipherable, illegible, unexplained and not supportive of the miscellaneous deductions claimed.

13. In order for a proper review of these documents to take place, they were given to the Division's representative at the conclusion of the hearing for her review and analysis at a later date. Subsequently, the Division's representative returned the documents to the Presiding Officer with a letter which stated "Upon review of the documents submitted at the Small Claims Hearing on May 8, 2002, it is our position that these documents do not adequately support any changes to the 1995 and 1996 assessments."

14. Petitioners' representative received a copy of this letter and was granted time to reply thereto or submit additional clarifying documents, however, no response or additional evidence was submitted.

CONCLUSIONS OF LAW

A. Tax Law § 689(e) places the burden of proof on petitioners to show that the basis for the assessment was unreasonable or that the amount of tax assessed was incorrect (*Matter of Micheli Contr. Corp. v. New York State Tax Commn.*, 109 AD2d 957, 486 NYS2d 448). The record before me contains no credible evidence to show that petitioners are properly entitled to any deductions in 1995 and 1996 for contributions or miscellaneous deductions. Accordingly, no such deductions are allowed.

B. The petition of Thomas and Lenore Baccarella is denied and the two notices of deficiency issued on September 11, 1998, with respect to the years 1995 and 1996, are sustained together with such additional penalty and interest as may lawfully be owing.

DATED: Troy, New York
October 3, 2002

/s/ James Hoefer
PRESIDING OFFICER