

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
ANTHONY AND DAWN SIRAGUSA
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.

DETERMINATION
DTA NO. 818237

Petitioners, Anthony and Dawn Siragusa, 44 Oak Street, Floral Park, New York 11001, 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 24, 2001 at 2:45 P.M. Petitioners appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Maryanne Witkowski).

The final brief in this matter was due to be filed by September 7, 2001, and it is this date that commences the three-month period for the issuance of this determination.

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 contributions and miscellaneous deductions.

FINDINGS OF FACT

1. Petitioners herein, Anthony and Dawn Siragusa, filed a timely New York State resident income tax return for 1995 reporting thereon New York adjusted gross income of \$64,197.00 and subtracting therefrom New York itemized deductions of \$22,090.00. Petitioners also filed a timely New York State resident income tax return for the 1996 tax year reporting New York adjusted gross income of \$63,932.00 and New York itemized deductions of \$22,969.00.

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. For both years at issue the Division concluded that petitioners had properly substantiated and were entitled to claim deductions for taxes and interest. The Division also determined that for each year in question petitioners had failed to adequately substantiate any of their claimed deductions for contributions and miscellaneous deductions.

3. On August 3, 1998, the Division issued two notices of deficiency to petitioners, one for each year at issue. For the 1995 tax year the Notice of Deficiency disallowed \$6,950.00 of claimed itemized deductions (\$22,090.00 claimed less \$15,140.00 allowed) and said adjustment resulted in additional New York State personal income tax due of \$542.00. The Notice of Deficiency for the 1996 tax year disallowed \$7,368.00 of claimed itemized deductions (\$22,969.00 claimed less \$15,601.00 allowed), which adjustment produced additional tax due of \$524.00. In addition to the tax due, each notice of deficiency also asserted that interest and negligence penalty were 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 on January 12, 2000, and on September 29, 2000 it issued a Conciliation Order wherein the tax due for 1995 was reduced from \$542.00 to \$501.00 as the result of the allowance of an additional \$500.00 in real estate taxes. The Conciliation Order sustained the tax due for the 1996 tax year as asserted in the Notice of Deficiency. The Conciliation Order also indicated that "Payments and abatements of \$1,400.89 have been applied to the above Notices resulting in an overpayment of \$62.02."

SUMMARY OF PETITIONERS' POSITION

5. Petitioners maintain that they made deductible charitable contributions during each year at issue to Our Lady of Victory Church in Floral Park, New York. A letter containing the parish seal was submitted in evidence to verify that petitioners were registered parishioners of Our Lady of Victory Church in both 1995 and 1996. Neither petitioner appeared at the hearing held herein to offer their testimony; however, an undated handwritten letter signed by petitioner Dawn Siragusa stated that petitioners "attend church on a weekly basis and observe all holy days of obligation but do not use the envelope system. We do not want to be listed & compared to other parishioners. . . . We attend church functions and contribute our time & money to the parish. In 1995 \$1,950.00 and in 1996 \$1,600.00." Petitioners also assert that they contribute annually to Girl Scouts, Boy Scouts, the missions, the American Heart Association and the National Autism Society and that these contributions totaled \$325.00 in 1995 and \$495.00 in 1996. No canceled checks, cash receipts or other form of 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. To support claimed miscellaneous expenses, petitioners submitted two handwritten summaries, one entitled “air conditioning & heating work related expenses of Anthony Siragusa” and the other entitled “medical personnel expenses of Dawn Siragusa.” Each schedule contained a list of numerous job related expenses each petitioner allegedly incurred for such items as clothing, tools, union dues, journals, automobile expenses, license renewal, malpractice insurance and seminars. As was the case with contributions, no canceled checks, receipts, credit card statements or other form of credible evidence was adduced to substantiate that the alleged miscellaneous expenses were in fact incurred, and, if incurred, the dollar amount of said expenses.

CONCLUSIONS OF LAW

A. Tax Law § 689(e) places the burden of proof on petitioners to show that the notices of deficiency herein are erroneous. In the instant matter, petitioners have failed to submit any credible evidence to support the claimed deductions for charitable contributions or miscellaneous job related expenses. Not one canceled check, cash receipt or credit card statement was offered in evidence by petitioners to support these deductions. Furthermore, neither petitioner herein appeared at the hearing to offer their testimony. There is simply no credible evidence in the record before me to show that charitable donations were made or that petitioners incurred any unreimbursed job related expenses; nor is there any credible evidence to support the dollar amount of these alleged deductions. Clearly, petitioners have failed to meet their burden of proof with respect to the claimed deductions for charitable contributions and miscellaneous job related expenses.

B. The petition of Anthony and Dawn Siragusa is denied and the two notices of deficiency dated August 3, 1998 are, except as modified by the Conciliation Order dated September 29, 2000, sustained.

DATED: Troy, New York
November 29, 2001

/s/ James Hoefler
PRESIDING OFFICER