

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RAISA VERYANSKAYA	:	SMALL CLAIMS DETERMINATION DTA NO. 820799
for Redetermination of Deficiencies or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law and New York City Personal Income Tax	:	
pursuant to the Administrative Code of the City of New	:	
York for the Years 2002 and 2003.	:	

Petitioner, Raisa Veryanskaya, 2010 Ocean Avenue, Apt. B1, Brooklyn, New York 11230, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax pursuant to the Administrative Code of the City of New York for the years 2002 and 2003.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York, on December 13, 2006 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Mac Wyszomirski).

The final brief in this matter was submitted on January 5, 2007, and it is this date that triggers the three-month period for the issuance of this determination.

ISSUE

Whether petitioner is entitled to claim head of household filing status for the two years at issue in this proceeding.

FINDINGS OF FACT

1. Petitioner, Raisa Veryanskaya, and her husband, Aron Veryanskaya, were married in 1968 in the former Soviet Union. In 1996, petitioner and Mr. Veryanskaya emigrated from the Ukraine to the United States, establishing a residence in New York City. Petitioner became a citizen of the United States in 2002.

2. For the tax years 1996 through 2001, petitioner and her husband filed New York State and City personal income tax returns claiming a filing status of “married filing joint return.” For the 2002 and 2003 tax years, petitioner filed her New York State and City income tax returns claiming head of household filing status, while Aron Veryanskaya filed his New York State and City income tax returns for these two years claiming a filing status of “married filing separate return.” Both petitioner and her husband listed the same address, 2010 Ocean Avenue, Apt. B1, Brooklyn, New York 11230, as their principal place of abode on their respective tax returns for the years 2002 and 2003. For the years 2004 and 2005, petitioner and her husband once again filed New York State and City income tax returns claiming a married filing joint return filing status.

3. On August 16, 2004, the Division of Taxation (“Division”) issued to petitioner separate statements of proposed audit changes, one for each year in question, asserting that additional New York State and City income tax was due for the 2002 and 2003 tax years. Each Statement of Proposed Audit Changes contained the following explanation:

Based on available information, we have changed your filing status.

Married taxpayers living at the same address, who elect to file separate returns, must each claim the filing status “Married Filing Separate Return” on their New York returns.

You have been allowed the appropriate New York standard deduction.

Since your filing status is married filing separate returns, and your combined adjusted gross income (federal) is over \$32,000.00, you are not allowed the household credit.

Your earned income credit has been disallowed. You cannot claim the Earned Income Credit if your filing status was “married filing separately”

. . . .

4. On December 6, 2004, the Division issued two notices of deficiency to petitioner asserting that she owed additional New York State and New York City taxes of \$869.00 for 2002 and \$947.20 for 2003. Each Notice of Deficiency also asserted that interest was due. Petitioner contested the two notices of deficiency by filing a petition with the Division of Tax Appeals and this small claims proceeding ensued.

5. During the years 2002 and 2003, petitioner and her husband were experiencing marital problems and, while they continued to live in the same apartment for these two years, it was not as husband and wife. Petitioner and her husband were never legally separated under a decree of divorce or of separate maintenance.

6. Petitioner was reluctant to compel her husband to vacate the apartment because his health insurance was carried through her policy, and if they were separated and living in different abodes his medical insurance would have been canceled. Petitioner also felt it would be inhuman to have her husband, a Holocaust survivor, leave the apartment. For the years 2002 and 2003 the expenses to maintain the apartment were divided between petitioner, her husband and an adult daughter who also resided in the apartment with petitioner’s grandchild.

SUMMARY OF PETITIONER’S POSITION

7. Petitioner notes that her Federal income tax returns for 2002 and 2003 were filed in the same manner as her New York State and City income tax returns, i.e., both claimed head of household filing status. Since the Federal returns for 2002 and 2003 were accepted as filed,

petitioner asserts that the Division must also accept the head of household filing status. In petitioner's view, her filing status must be the same for both Federal and New York income tax purposes and that it is improper for the Division to change her filing status to one that is inconsistent with the claimed and allowed Federal filing status.

CONCLUSIONS OF LAW

A. Tax Law § 607 entitled "Meaning of terms" provides that the terms used in Article 22 of the Tax Law will have the same meaning as when used in a comparable context in the provisions of the Internal Revenue Code ("IRC"), unless a different meaning is clearly required. Subsection (b) of Tax Law § 607 further provides that "an individual's marital or other status . . . shall be the same as his marital or other status for purposes of establishing the applicable federal income tax rates." Accordingly, it is appropriate to review the applicable provisions of the IRC, regulations and case law to determine if petitioner is entitled to claim head of household filing status under the facts presented in this case.

B. As relevant to this controversy, petitioner, in order to be eligible to claim head of household filing status, must be unmarried (IRC § 2[b][1]) or considered unmarried (IRC § 7703[b]) on the last day of each tax year in dispute. To be unmarried, a taxpayer must be legally separated from his or her spouse pursuant to a decree of divorce or of separate maintenance (IRC § 2[b][2][B]; 7703[a][2]). Certain married individuals can be considered unmarried if they meet three conditions, one of which is that during the last six months of the year the taxpayer's spouse is not a member of the household (IRC § 7703[b][3]).

C. In the instant matter, it is undisputed that petitioner was never legally separated from her husband pursuant to a decree of divorce or of separate maintenance. It is also clear that petitioner's husband was a member of the household for the entire two years in question.

Accordingly, petitioner was not unmarried for the two years in dispute, nor does she qualify as a married individual who can be considered unmarried. Therefore, petitioner is not entitled to claim head of household filing status for the 2002 and 2003 tax years (*see, Dawkins v. Commr.*, 61 TCM 2667; *Mischel v. Commr.*, 74 TCM 253).

D. Petitioner's argument that the Division is bound to accept her claimed head of household filing status since the Internal Revenue Service ("IRS") accepted it for the two years at issue is rejected. There is no evidence to show that the IRS examined petitioner's claimed filing status for the years 2002 and 2003 and accepted her head of household status after an audit. In fact, petitioner does not even allege that the IRS conducted an examination of her filing status for these two years, and it would seem that the IRS simply accepted her Federal income tax returns as filed without an audit. As can be seen from Conclusions of Law "B" and "C", petitioner is clearly not entitled to claim head of household filing status for the years in question. The Division is free to conduct its own independent audit or examination and is not bound to accept the actions of the IRS (*see*, 20 NYCRR 159.4).

E. Petitioner prepared her own income tax returns and it is clear from the record that she is not sophisticated or knowledgeable in tax matters. Petitioner sincerely believed that she qualified for the head of household filing status and her intent here was not to avoid or evade her income tax responsibilities. Accordingly, it is fair and equitable (Tax Law § 2012) to recompute petitioner's New York State and City income tax liability for the years 2002 and 2003 on the basis of joint income tax returns, an option petitioner and her husband clearly would have chosen had they realized that petitioner was not legally entitled to claim head of household filing status. By post-hearing letter dated December 29, 2006, the Division's representative advised that by

using married filing joint status the additional New York State and City tax due totals \$722.00, a reduction of \$147.00, for 2002 and \$873.00, a reduction of \$74.00, for 2003.

F. The petition of Raisa Veryanskaya is granted to the extent indicated in Conclusion of Law “E”, the Division is directed to modify the two notices of deficiency dated December 6, 2004 consistent with this determination and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York
March 8, 2007

/s/ James Hoefer
PRESIDING OFFICER