

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
WILLIAM AND MARGUERITE SAYEGH	:	SMALL CLAIMS DETERMINATION DTA NO. 820981
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2002.	:	

Petitioners, William and Marguerite Sayegh, 157-25 9th Avenue, Whitestone, New York 11357, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 2002.

A small claims hearing was held before Timothy J. Alston, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on April 4, 2007 at 9:15 A.M., which date began the three-month period for the issuance of this determination. Petitioner William Sayegh appeared *pro se* and on behalf of his spouse, Marguerite Sayegh. The Division of Taxation appeared by Daniel Smirlock, Esq. (Susan Parker).

ISSUE

Whether the Division of Taxation properly disallowed petitioners' claimed itemized deductions for the 2002 tax year.

FINDINGS OF FACT

1. Petitioners, William Sayegh and Marguerite Sayegh, filed a timely joint New York income tax return for the 2002 tax year. Although the return listed a Whitestone, New York,

mailing address and a Long Beach, New York, permanent home address, petitioners filed their 2002 return on Form IT-203 (Nonresident and Part-Year Resident Income Tax Return) and reported on the return that they did not maintain living quarters in New York in 2002.

Petitioners reported income in the Federal column on their return and did not report any New York income on the return. Specifically, petitioners reported \$105,915.40 in Federal adjusted gross income. They also reported itemized deductions (after a state and local income tax subtraction adjustment) totaling \$93,753.50. Petitioners thus reported taxable income of \$12,161.90 and New York tax liability of \$487.00. Petitioners had \$4,909.30 in New York State and \$2,705.02 in New York City income tax withheld and thus claimed a refund on their return of \$7,127.32.

2. Petitioner William Sayegh was employed at Mount Sinai Hospital in Queens, New York, during the year at issue. His W-2 for 2002 shows wages of \$86,718.25, New York State tax withheld of \$4,909.30 and New York City tax withheld of \$2,705.02.

3. Following receipt of petitioners' return, the Division of Taxation ("Division") issued to petitioners a Request for Missing Information or Forms by which the Division requested information regarding petitioners' residency status. Petitioners responded by providing the Division with documentation that they resided in Long Beach, New York, during the year at issue. Among the documentation submitted was a receipt for payment of Nassau County taxes in the amount of \$292.19 for property located at 44 New Hampshire Street, Long Beach, New York.

4. The Division subsequently processed petitioners' 2002 return and, by check dated July 3, 2003, the Division issued to petitioners a refund of \$7,614.32 for 2002. It is noted that the refund equals the amount of withholding tax paid by petitioners for 2002 and exceeds the refund

amount claimed on the return. A Notice of Adjusted Refund accompanied the refund check issued to petitioners. Although, as noted, the adjusted refund was greater than that claimed by petitioners on their return, the Notice of Adjusted Refund calculated petitioners' adjusted refund based on petitioners' items of income and deduction as reported on their return. The Notice of Adjusted Refund states at the bottom: "Retain as evidence of refund."

5. By letter dated September 29, 2004, the Division advised petitioners that their New York State income tax returns for years 2001, 2002 and 2003 were under review and requested that petitioners make available documentation to verify the itemized deductions claimed on such returns.¹ The letter provided examples of the sort of documentation needed to substantiate the most commonly claimed deductions. The letter also advised petitioners that, despite their previous submission of proof as to residency, the Division considered their residence to be Whitestone, New York, and that therefore they were subject to tax as New York City residents.

6. Petitioners responded to the Division's September 29, 2004 letter by letter dated October 25, 2004. Petitioners submitted a copy of their Federal schedule A for the year at issue, copies of pay stubs, and copies of utility bills for the Long Beach residence. Petitioners did not submit any documentation in support of their claimed itemized deductions. In this regard the letter stated: "Any other copies involve lots of paper, impossible to send by mail, it can be shown in person if you wish."

7. On December 27, 2004, the Division issued to petitioners a Statement of Proposed Audit Changes by which the Division advised petitioners that the information they had provided did not support their claimed itemized deductions and therefore the Division had disallowed all of their claimed itemized deductions. The statement also advised that although petitioners had

¹ The 2001 and 2003 tax years are not at issue in this proceeding.

established that they owned property in Long Beach, New York, “all available information” indicated that petitioners’ primary residence was in Whitestone, New York. The Division thus concluded that petitioners were subject to tax as full-year residents of New York City. The statement noted that petitioners had been allowed the appropriate standard deduction of \$14,200.00 and computed a net liability for 2002 of \$5,582.41 in New York State tax and \$2,908.00 in New York City tax due, plus interest.

8. Subsequently, on February 22, 2005, the Division issued to petitioners a Notice of Deficiency which asserted \$5,582.41 in additional New York State income tax due and \$2,908.00 in additional New York City income tax due, plus interest, for the year 2002.

9. Following a conciliation conference on October 12, 2005, the Division’s Bureau of Conciliation and Mediation Services issued a conciliation order dated December 16, 2005 which modified the subject Notice of Deficiency by canceling the New York City income tax portion of the deficiency. In accordance with the Conciliation Order, the recomputed notice thus asserted \$5,582.00 in New York State income tax due for 2002, plus interest.

10. Consistent with the Conciliation Order, at the hearing the Division’s representative expressly conceded that petitioners did not reside in New York City during the year in question and therefore were not subject to New York City resident income tax.

11. Petitioners’ Federal schedule A as filed for the year at issue claims a total of \$100,364.78 in deductions itemized as follows:

Medical expenses	\$38,421.20
State and local income taxes	\$ 7,614.32
Real estate taxes	\$12,672.20
Personal property taxes	\$ 1,900.00
Charitable contribution (St. Luke’s Church)	\$ 9,200.00
Charitable contribution (Our Lady of Lebanon Jewish Federation)	\$ 8,100.00
Charitable contributions other than by cash or check	\$ 2,415.00
Job expenses and other miscellaneous expenses	\$20,042.06

12. Except for the State and local tax withheld (which are not included in New York itemized deductions) and a small amount of real estate taxes paid (*see*, Finding of Fact “3”), petitioners have not offered any documentation regarding any of the claimed deductions listed above.

13. At the hearing petitioners submitted a copy of a letter dated February 10, 2006 addressed to them from the Division regarding their 2004 New York returns. In response to petitioners’ concern about providing substantiation for itemized deductions claimed on their 2004 return, the letter states:

Once you have provided the requested documentation, all itemized deductions that have been substantiated will be allowed in the computation of tax due for the year in question. You will not be required to provide the same documentation for the same year at a later date.

SUMMARY OF PETITIONERS’ POSITION

14. Petitioners contended that, as shown by the Division’s Request for Missing Information or Forms, the Notice of Adjusted Refund, and the refund check dated July 3, 2003, the Division had previously audited petitioners’ 2002 return. Petitioners argued that they should not be subject to a second audit for the same year. Petitioners further contended that they discarded records for the 2002 tax year in reliance on the Notice of Adjusted Refund, which, they claim, resolved petitioners’ tax liability for the 2002 tax year.

CONCLUSIONS OF LAW

A. Contrary to petitioners’ contention, the Division did not audit petitioners’ 2002 return prior to the issuance of the July 3, 2003 refund check. The Request for Missing Information or Forms merely sought information regarding petitioners’ residence, and as shown by the Notice of Adjusted Refund (*see*, Finding of Fact “4”), the Division did not examine any items of income or deduction prior to the issuance of the refund check. The only audit of petitioners’ 2002 return

began with the issuance of the September 29, 2004 letter (*see*, Finding of Fact “5”) and resulted in the issuance of the February 22, 2005 Notice of Deficiency.

B. Petitioners have also failed to establish that they discarded records in reliance on the Notice of Adjusted Refund. This contention is contradicted by petitioner William Sayegh’s letter, dated October 25, 2004, submitted in response to the Division’s September 29, 2004 request for documentation (*see*, Finding of Fact “6”). In that letter, Mr. Sayegh indicates that he has documentation and makes no reference to having discarded any documentation in reliance on the July 3, 2003 Notice of Adjusted Refund.

Even if petitioners did in fact rely on the Notice of Adjusted Refund to discard records, such reliance was unreasonable. The Notice of Adjusted Refund merely states that it should be retained as evidence of a refund (*see*, Finding of Fact “4”). It contains no language indicating that such refund finally or irrevocably fixed petitioners’ tax liability for the year 2002.

Petitioners also noted in support of their position the February 10, 2006 letter from the Division issued to them with respect to the 2004 tax year, which states as a general proposition “*Once you have provided the requested documentation . . . [y]ou will not be required to provide the same documentation for the same year at a later date*” (emphasis added). Here, however, petitioners have not, at any time, provided requested documentation with respect to their claimed itemized deductions for the 2002 tax year. This statement thus does not support petitioners’ position that they had been previously audited for 2002 and should not have to produce documentation in the instant matter.

C. Turning to the substantive issue of whether petitioners have established entitlement to their claimed itemized deductions for 2002, when the Division issues a Notice of Deficiency to a taxpayer, a presumption of correctness attaches to the notice, and the burden of proof is on the

taxpayer to demonstrate that the deficiency assessment is erroneous by clear and convincing evidence (*Matter of O'Reilly*, Tax Appeals Tribunal, May 17, 2004). Petitioners thus had the burden to show entitlement to the deductions claimed on their Federal schedule A and to substantiate the amount of the deductions (*see*, Tax Law § 658[a]; § 689(e); 20 NYCRR 158.1; *Matter of Macaluso*, Tax Appeals Tribunal, September 22, 1997, *confirmed* 259 AD2d 795, 686 NYS2d 193). Furthermore, petitioners were required under the Tax Law to maintain adequate records of their items of deduction for the years in issue (Tax Law § 658[a]; 20 NYCRR 158.1[a]).

D. Since petitioners have offered no evidence of the amount of their claimed itemized deductions for 2002, there is no basis to make any further adjustment to the February 22, 2005 Notice of Deficiency.

E. Petitioners also claimed that the audit herein was some sort of retaliation following Mr. Sayegh's telephone conversation with a Division employee in 2004 to find out about his 2003 refund. This contention is unsupported by the record.

F. The petition of William Sayegh and Marguerite Sayegh is in all respects denied and the Notice of Deficiency dated February 22, 2005, as modified by the Conciliation Order dated December 16, 2005, is sustained.

DATED: Troy, New York
May 24, 2007

/s/ Timothy J. Alston
PRESIDING OFFICER