

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>WILLIAM AND MARGUERITE SAYEGH</b>	:	DETERMINATION DTA NO. 821301
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 2001.	:	

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Petitioners, William and Marguerite Sayegh, 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 2001.

On June 4, 2008 and June 22, 2008, respectively, petitioners, and the Division of Taxation, by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel), waived a hearing and agreed to submit this matter for determination based on documents and briefs to be submitted by October 26, 2007, which commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly disallowed petitioners' claimed itemized deductions for the 2001 tax year.

***FINDINGS OF FACT***

1. Petitioners, William and Marguerite Sayegh, filed a timely joint New York income tax return for the 2001 tax year. Although the return listed a Whitestone, New York, mailing address and a Long Beach, New York, permanent home address, petitioners filed their 2001 return on

Form IT-203 (Nonresident and Part-Year Resident Income Tax Return) and left blank on the return a section which asked petitioners to designate the address of any living quarters maintained in New York State in 2001. Petitioners reported income in the federal column on their return and did not report any New York income on the return. Specifically, petitioners reported \$112,049.67 in federal adjusted gross income. They also reported itemized deductions (after a state and local income tax subtraction adjustment) totaling \$85,686.77. Petitioners thus reported taxable income of \$26,362.90 and New York tax liability of \$1,142.00. Petitioners had \$5,006.12 in New York State and \$2,907.09 in New York City income tax withheld, and thus claimed a refund on their return of \$6,771.21.

2. Petitioner William Sayegh was employed at Mount Sinai Hospital in Queens, New York, during the year at issue. His W-2 for 2001 shows wages of \$87,935.32, New York State tax withheld of \$5,006.12 and New York City tax withheld of \$2,907.09.

3. The Division processed petitioners' 2001 return and, by check dated May 31, 2002, it issued to petitioners a refund of \$6,611.28 for 2001. A Notice of Adjusted Refund accompanied the refund check issued to petitioners. The Notice of Adjusted Refund calculated petitioners' adjusted refund based on petitioners' items of income and deduction as reported on their return, without any adjustment to those items individually, but generally adjusted to reflect a New York State income allocation percentage of 100. The Notice of Adjusted Refund states at the bottom: "Retain as evidence of refund."

4. 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.<sup>1</sup> The letter provided examples of the types 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.

5. Petitioners responded to the Division's September 29, 2004 letter by correspondence 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."

6. On December 27, 2004, the Division issued to petitioners a Statement of Proposed Audit Changes advising petitioners that the information they had provided did not support their claimed itemized deductions and therefore all claimed itemized deductions were disallowed. The statement also advised that, although petitioners had 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 State and New York City. The statement noted that petitioners had been allowed the appropriate standard deduction of \$13,400.00 and computed a net liability for 2001 of \$4,852.88 in New York State tax and \$3,020.00 in New York City tax due, plus interest.

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<sup>1</sup> The 2002 and 2003 tax years are not at issue in this proceeding.

7. Subsequently, the Division issued to petitioners a Notice of Deficiency dated April 4, 2005, which asserted \$4,852.88 in additional New York State income tax due and \$3,020.00 in additional New York City income tax due, plus interest, for the year 2001.

8. Following a conciliation conference on March 15, 2006, the Division's Bureau of Conciliation and Mediation Services issued a conciliation order, dated June 16, 2006, 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 \$4,852.86 in New York State income tax due for 2001, plus interest.

9. Petitioners' New York State income tax return as filed for 2001 claimed the following New York itemized deductions totaling \$85,686.77:

Medical expenses	\$29,503.67
Taxes	\$22,775.61
Gifts to Charity	\$19,700.00
Job expenses and other miscellaneous expenses	\$21,620.70
State and local income taxes	(\$7,913.21)

10. Except for the state and local tax withheld, which are deducted above to arrive at New York itemized deductions, petitioners have not offered any documentation regarding any of the claimed deductions listed above.

11. The petition in this matter claims that petitioners were audited for the same year at some prior time, they submitted all documentation requested, signed a statement accepting an adjustment and did not retain any other documents. Additionally, petitioners included a statement provided to them from the Audit Division as an answer in this controversy. It said:

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. However, as previously explained, each year stands on its' [sic] own.

### ***SUMMARY OF THE PARTIES' POSITIONS***

12. Petitioners contend that the Division had previously audited their 2001 return, referencing the adjusted refund. Petitioners argue that they should not be subject to a second audit for the same year and that they had signed documentation accepting an audit adjustment. Petitioners retained the notice which indicated it was to be retained as evidence, thus petitioners claim not to have retained any further proof of deductions for that year.

13. The Division maintains that it had not previously conducted an audit, and the burden remains with petitioners to maintain records sufficient to enable the Division to determine their correct liability and the burden of substantiating the amount and purpose of the claimed deduction.

### ***CONCLUSIONS OF LAW***

A. Contrary to petitioners' contention, the Division did not audit petitioners' 2001 return prior to the issuance of the May 31, 2002 refund check. The Division did not examine any items of income or deduction prior to the issuance of the refund check. The only review of petitioners' 2001 return began with the issuance of the September 29, 2004 letter (*see* Finding of Fact 4) and resulted in the issuance of the April 4, 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 5). In that letter, Mr. Sayegh indicates that he has documentation and makes no reference to having discarded any documentation in reliance on the 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 3). It contains no language indicating that such refund finally or irrevocably fixed petitioners' tax liability for the year 2001.

In their petition, petitioners also noted in support of their position the existence of correspondence from the Division's Director of Audit, where it was stated 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 2001 tax year. This statement thus does not support petitioners' position that they had been previously audited for 2001 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 2001, 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 is erroneous by clear and convincing evidence (*Matter of Atlantic & Hudson Ltd. Partnership*, Tax Appeals Tribunal, January 30, 1992). 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 [1999]). 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 2001, there is no basis to make any further adjustment to the April 4, 2005 Notice of Deficiency.

E. The petition of William Sayegh and Marguerite Sayegh is in all respects denied and the Notice of Deficiency dated April 4, 2005, as modified by the Conciliation Order dated June 16, 2006, is sustained.

DATED: Troy, New York  
April 24, 2008

/s/ Catherine M. Bennett  
ADMINISTRATIVE LAW JUDGE