

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MICHAEL M. AND CHARLOTTE M. LIPPMAN	:	DETERMINATION DTA NO. 821982
for Redetermination of a Deficiency for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 2003.	:	

Petitioners, Michael M. Lippman and Charlotte M. Lippman, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2003.

On July 14, 2008 and July 24, 2008, respectively, petitioners, appearing pro se, and the Division of Taxation, appearing by Daniel Smirlock, Esq. (Margaret T. Neri, Esq., of counsel), waived a hearing and submitted the matter for determination based on documents and briefs to be submitted by April 6, 2009, which date began the six-month period for issuance of this determination. After due consideration of the documents submitted and the pleadings and proceedings had herein, Joseph W. Pinto, Jr., Administrative Law Judge, renders the following determination.

ISSUE

Whether gambling losses claimed as itemized deductions are properly subject to the itemized deduction limitation under Tax Law § 615(f).

FINDINGS OF FACT

1. Following an exchange of information with the Internal Revenue Service, the Division of Taxation discovered that the income reported on petitioners' 2003 New York State Personal Income Tax Return was less than that reported on their federal income tax return for the same period. Included in petitioners' federal and state income were gambling winnings and losses.

2. The Division of Taxation recomputed petitioners' liability based on the federal income figures provided by petitioners for 2003 and issued a Statement of Proposed Audit Changes, dated January 29, 2007, which increased petitioners' adjusted gross income on their New York income tax return by \$1,172,100.00 to \$2,148,175.00. This increase in income, along with some less significant modifications, resulted in additional New York State and City of Yonkers resident income tax of \$94,764.05. The Division of Taxation also proposed penalty for substantial understatement of tax pursuant to Tax Law § 685(p).

3. Although the Statement of Proposed Audit Changes invited petitioners to submit documentation to substantiate modifications to its recomputation of income, nothing persuasive to the Division was forthcoming, and a Notice of Deficiency, dated March 26, 2007, was issued which asserted additional tax due of \$94,764.05 plus penalty and interest, for a total due of \$127,414.71.

4. Subsequently, a conference was held in the Bureau of Conciliation and Mediation Services where the tax due was reduced to \$45,106.00 plus penalty and interest.

SUMMARY OF THE PARTIES' POSITIONS

5. The Division of Taxation contends that Tax Law § 615(f) limits the amount of itemized deductions based on a taxpayer's total income, which limited petitioners herein to 50 percent of their itemized deduction.

6. Petitioners argue that their federal income included \$1,172,100.00 in gambling winnings which were offset by gambling losses that exceeded that amount. They believe that the federal deduction should not be modified by New York State and that the income amount they reported to New York on their return should be accepted as correct.

CONCLUSIONS OF LAW

A. New York itemized deductions are subject to limitation where a taxpayer's adjusted gross income exceeds certain levels, depending on filing status (*see* Tax Law § 615[f]; 20 NYCRR 115.5). As filers who were married filing jointly, petitioners were subject to a specific limitation on their total itemized deductions where their New York adjusted gross income exceeded \$475,000.00 (*see* 20 NYCRR 115.5[b][2] and 115.5[c][1][ii]). Pursuant to Tax Law § 615(f), all New York itemized deductions, including gambling losses to the extent of winnings, are subject to the New York itemized deduction limitation (*Matter of Pospischil*, Tax Appeals Tribunal, June 6, 1996).

B. As noted in *Pospischil*, Tax Law § 615(f) contains no language exempting or otherwise removing gambling losses, or indeed, any category of deduction, from the reduction calculations. In contrast, the analogous federal provision, Internal Revenue Code § 68 (Overall Limitation on Itemized Deductions), specifically excepts certain categories of deductions, including gambling losses to the extent of winnings, from the reduction calculations (*see* IRC § 68[c]).

C. Petitioners have cited no authority for their claim that they are entitled to deduct their gambling losses to the extent of their winnings, and therefore, their request for relief must be denied.

D. The petition of Michael M. Lippman and Charlotte M. Lippman is denied and the Notice of Deficiency, as modified, dated March 26, 2007, is sustained.

DATED: Troy, New York
August 20, 2009

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE