

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petitions	:	
of	:	
<b>FLOYD GOODE</b>	:	DETERMINATION
for Redetermination of Deficiencies or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Years 2007, 2008 and 2009.	:	DTA NOS. 824140, 824179 AND 824180

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Petitioner, Floyd Goode, filed petitions for redetermination of deficiencies or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2007, 2008 and 2009.

A hearing was held before Timothy Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 1384 Broadway, New York, New York, on May 15, 2012, at 10:30 A.M., with all evidence due by June 29, 2012, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Mark F. Volk, Esq. (Christopher O'Brien, Esq., of counsel).

***ISSUE***

Whether petitioner has established entitlement to certain Schedule A itemized deductions and Schedule E losses.

***FINDINGS OF FACT***

1. On December 27, 2010, following an audit, the Division of Taxation (Division) issued to petitioner, Floyd Goode, a Notice of Deficiency asserting \$6,162.45 in additional New York State and New York City income tax due, plus interest, for the year 2007.

2. The 2007 deficiency resulted from the disallowance of a claimed Schedule E loss of \$17,412.00 for lack of substantiation and the disallowance of all claimed Schedule A itemized deductions due to the fact that petitioner's spouse, who filed a separate return, claimed a standard deduction. By a Statement of Proposed Audit Changes, dated October 21, 2010, the Division advised that where, as in this case, a husband and wife file separately they must both either itemize or take the appropriate standard deduction. The Division used the standard deduction for married filing separately status in computing petitioner's 2007 liability.

3. Also on December 27, 2010, the Division issued to petitioner a Notice of Deficiency asserting \$3,452.96 in additional New York State and New York City income tax due, plus interest, for the year 2008.

4. The 2008 deficiency resulted from the disallowance, for lack of substantiation, of petitioner's claimed Schedule E loss of \$16,467.00 and \$14,437.00 of petitioner's claimed \$48,512.00 of Schedule A itemized deductions. More specifically with respect to the itemized deductions, the Division allowed petitioner's claimed mortgage interest deduction of \$43,084.00 only to the extent of \$32,725.00, an amount indicated as mortgage interest paid by petitioner on a 2008 Mortgage Interest Statement (Form 1098). Petitioner's claimed New York deduction for taxes paid of \$2,268.00 was allowed to the extent of \$1,350.00, as also indicated on the Mortgage Interest Statement. Petitioner's claimed gifts to charity of \$1,380.00 and claimed job expenses of \$1,780.00 were denied in their entirety for lack of substantiation.

5. With respect to the 2009 tax year, petitioner filed a return under the married filing separately status on February 2, 2010. That return claimed a refund of \$5,473.00. The Division subsequently requested documentation to support the amounts claimed on the Schedules A and E attached to the return. Petitioner did not comply with this request to the Division's satisfaction,

and the Division disallowed all claimed Schedule A deductions and as well as the claimed Schedule E loss and recomputed petitioner's liability using the appropriate standard deduction. These adjustments resulted in a refund allowed of \$34.00. Petitioner later filed an amended 2009 return that claimed a refund of \$5,167.00. The Division again requested substantiation and subsequently recomputed petitioner's liability that allowed a refund of \$312.00. Petitioner then filed another amended return for 2009 on September 17, 2010, this time using the status of married filing jointly and claiming a refund of \$4,552.00. Upon review of documentation provided at the Division's request to substantiate itemized deductions and Schedule E loss as claimed on that return, the Division allowed an additional refund of \$1,005.66. In making this recomputation, the Division disallowed the claimed schedule E loss in its entirety as unsubstantiated. The Division disallowed claimed deductions for gifts to charity, theft losses and job expenses on the same basis. The Division allowed a deduction for mortgage interest to the extent of \$24,356.00 and real estate taxes to the extent of \$1,350.00, both amounts as indicated on a 2009 Mortgage Interest Statement issued to petitioner.

6. All of the Schedule E expenses claimed by petitioner during the years at issue were purportedly incurred in connection with a three-family house owned by petitioner and located in Brooklyn, New York. Petitioner and his wife lived in one of the three apartments during the years at issue and his adult son and daughter lived in the other units "off and on" during the same period. Petitioner's children paid rent occasionally but not consistently during the relevant period and it does not appear that there was any agreed-upon monthly rental amount. As petitioner testified, "They are my kids. Whatever I get from them, that's it." Petitioner did not enter into a lease with either of his children. Petitioner's 2007 Schedule E reports \$4,200.00 in rental income from the property and his 2009 Schedule E reports \$2,100.00 in rental income

from the property. (Although petitioner filed a Schedule E with his 2008 return, it is not in the record.)

7. Petitioner also owns real property located in North Carolina that he uses as a vacation home. Petitioner submitted documentation consisting of printouts (captioned “Tax Bill Inquiry”) from the database of the local North Carolina taxing authority establishing that he paid property taxes on the North Carolina property totaling \$867.75 in 2007, \$982.72 in 2008, and \$1,375.00 in 2009.

8. Regarding gifts to charity, petitioner testified at hearing that he gave cash donations to a church in North Carolina, but he offered no documentation of this claimed charitable giving. He further testified that, on several occasions, he gave his mother cash as donations for her church in North Carolina. While petitioner’s bank statements in the record show numerous payments during the years at issue to his mother, Cornelia Goode, there is no documentation in the record linking any of these payments to any charitable organization.

9. Petitioner provided no documentation of his claimed job expenses. He testified that he bought “clothing, uniforms” and that “it may not be a requirement for the job.”

10. Petitioner claimed a theft loss on his 2009 return. In support of this claim, petitioner submitted a police incident report indicating a theft in March 2009 from his North Carolina home of a 48-inch flat screen television valued at \$8,000.00, a stereo system valued at \$3,000.00, and clothing valued at \$500.00. Petitioner did not produce any receipts of his purchases of the items in question or any other documentation of their value.

11. In a cover letter dated June 23, 2012, provided along with his post-hearing submission of documents, petitioner withdrew his claim of a theft loss for 2009.

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

A. Petitioner has the burden in this proceeding to show entitlement to all expenses and deductions claimed on his returns and to substantiate the amount of the expenses and 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]). Petitioner was required under the Tax Law to maintain adequate records of his items of expense and deduction for the years in issue (Tax Law § 658[a]; 20 NYCRR 158.1[a]).

B. Pursuant to Tax Law § 612(a), the New York adjusted gross income of a resident individual is federal adjusted gross income, with certain modifications not applicable in this case. Section 62(a)(1) of the Internal Revenue Code (IRC) defines the adjusted gross income as an individual's gross income minus certain deductions. Among the deductions permitted are deductions for expenses that are ordinary and necessary for (1) the production or collection of income or (2) for the management, conservation or maintenance of property held for the production of income (IRC § 212[1], [2]). IRC § 212 is the statutory authority for expenses reportable on Schedule E.

C. IRC § 280A imposes restrictions on deductions allowed under IRC § 212. Under that section as applied to the facts in this case, the use of the apartments by petitioner's children during the years at issue is considered a personal use of the apartments by petitioner and the expenses associated with the apartments are not deductible unless petitioner's children paid fair rental for the apartments (*see* IRC § 280A[a], [d][1-3]; § 267[c][4]).

D. Petitioner has not shown that his children paid fair rental for the apartments during the years at issue. He offered no specific information regarding the apartments themselves or what fair rental for the apartments might be. He apparently did not set a monthly rental amount for his

children and he accepted a sporadic pattern of rental payments that amounted to less than \$200 per month per apartment in 2007 and less than \$100 per month per apartment in 2009 (*see* Finding of Fact 6). Indeed, it appears that, in allowing his children to use the apartments, petitioner was acting as a parent rather than a landlord. While such conduct is laudable, this use of the apartments is considered personal to petitioner under the IRC. Accordingly, the Division properly denied petitioner's claimed schedule E losses for each of the years at issue.

E. Tax Law § 615(a) provides that taxpayers who itemize deductions on their federal return, may elect to itemize deductions on their New York return. That section defines the New York itemized deduction as the federal itemized deduction with modifications not relevant to the present matter.

F. Regarding the Division's disallowance of all of petitioner's claimed itemized deductions for 2007, Tax Law § 615(b)(1) provides that, where, as here, a husband and wife are both required to file New York returns, they may claim New York itemized deductions only if both elect to itemize. Here, the Division determined that petitioner and his wife filed separate returns for 2007 and that petitioner's wife took the standard deduction. There is no evidence in the record to the contrary. The Division thus properly denied petitioner's claimed New York itemized deductions for 2007.

G. IRC § 164 allows a deduction for, among other taxes, state and local real property taxes. Here, the record shows entitlement to deductions for property taxes paid on the Brooklyn property in the amounts allowed on audit (*see* Findings of Fact 4 and 5). Petitioner also established that he paid property taxes on his North Carolina home in the amounts indicated in Finding of Fact 7. For the tax years 2008 and 2009, such taxes were properly deductible.

H. For 2008, petitioner also asserted that he paid taxes on real property owned by his

grandmother, also located in North Carolina. Such payments, even if proven, were not deductible by petitioner because taxes may be deducted under IRC § 164 only by the person upon whom they are imposed (*see Griffin v. Commr.*, 83 TCM 1058 [2002]).

I. Gifts to charity are deductible pursuant to IRC § 170(a)(1). Petitioner has failed to substantiate any of his claimed charitable contributions (*see* Finding of Fact 8). The Division thus properly denied these claimed deductions.

J. Job expenses, such as petitioner's claimed purchases of clothing and uniforms are deductible under IRC § 162(a) only if, among other requirements, the clothing is required in the taxpayer's employment (*see Yeomans v. Commr.*, 30 TC 757, 767-768 [1958]). Here, petitioner testified that such items "may not be required" (*see* Finding of Fact 9) and thus undermined his claim. Furthermore, petitioner offered no receipts to prove the amount of these expenditures.

K. Payments of home mortgage interest are deductible pursuant to IRC § 163(a), (h)(2)(D); (3) and (4). Petitioner has offered no proof to show that he paid any home mortgage interest in excess of the amounts allowed by the Division on audit.

L. As noted, petitioner withdrew his claim of a theft loss for 2009. Even if he had not done so, the deduction would properly be denied because petitioner has not established the value of the claimed stolen items.

M. The petition of Floyd Goode is granted to the extent indicated in Conclusion of Law G, but is in all other respects denied. The Notice of Deficiency herein pertaining to the 2007 tax year is sustained. In accordance with Conclusion of Law G, the Division of Taxation is directed to modify the Notice of Deficiency herein pertaining to the 2008 tax year. Except as so modified, such notice is sustained. Also, in accordance with Conclusion of Law G, the Division is directed to recompute petitioner's 2009 income tax liability and to grant such additional refund, plus applicable interest, as such recomputation indicates.

DATED: Albany, New York  
November 15, 2012

/s/ Timothy Alston  
ADMINISTRATIVE LAW JUDGE