

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
M. HEIDI OTTO	:	DECISION
	:	DTA NO. 818778
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income Tax	:	
under Article 22 of the Tax Law and the New York City	:	
Administrative Code for the Years 1989 through 1998.	:	

Petitioner M. Heidi Otto, Main Post Office, Millbrook, New York 12545, filed an exception to the determination of the Administrative Law Judge issued on January 20, 2005. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Margaret T. Neri, Esq., of counsel).

Petitioner filed a brief in support of her exception and the Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether official notice should be taken of a Discharge Order issued on November 14, 2002 by the United States Bankruptcy Court for the Southern District of New York in the Matter of M. Heidi Otto, formerly doing business as Parc Brook Farms.

II. Whether, with respect to such bankruptcy matter, the automatic stay imposed under Bankruptcy Code § 362 (11 USC § 362) is not currently in effect and was not in effect on the February 27, 2003 date of the hearing held in this matter.

III. Whether petitioner has established any errors warranting reduction or cancellation of the tax, penalties or interest asserted as due by the Division of Taxation for the years in question.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioner, M. Heidi Otto, did not file New York State personal income tax returns in a timely manner for any of the years spanning 1989 through 1998. In 1998, the Division of Taxation (“Division”) commenced an audit of Ms. Otto for such years. By letters dated September 29, 1998 and December 12, 1998, respectively, the Division requested of Ms. Otto copies of her tax returns and canceled checks showing payment of income taxes for the ten years in question. Petitioner did not respond to either of these letters. In addition, the Division sought but was not able to obtain information from the Internal Revenue Service (“IRS”) regarding Ms. Otto’s income, since she had not filed income tax returns with the IRS for such years.

As the result of an internet search, the Division’s auditor found a web site which described a business petitioner operated in Millbrook, New York. This business, known as Parc Brook Farms, included a bed and breakfast inn, a thoroughbred horse breeding farm, and a real estate development operation. The auditor contacted petitioner by telephone in January 1999, and was advised that petitioner’s accountant would provide the necessary tax returns and records and information for audit. However, such information was never provided, despite repeated requests

for copies of petitioner's tax returns and other documents necessary to determine petitioner's income and her tax liability for the years in question.

The Division's auditor issued subpoenas to certain banks, including Fleet Mortgage Corp., Litchfield Bancorp and Pawlings Savings Bank, seeking documents and information with respect to mortgages on the Parc Brook Farms property. In turn, Litchfield Bancorp provided documents, including two loan applications signed by petitioner for loans she sought to obtain in 1992 and 1996 with respect to the Parc Brook Farms property in Millbrook, New York.

The 1992 loan application reflected the following income and asset information pertaining to petitioner:

INCOME

<u>Item</u>	<u>Gross Monthly Income</u>	<u>Gross Yearly Income</u>
Base Employment Income	\$49,166.00	\$589,992.00
Dividends/Interest	400.00	4,800.00
<u>Rental Income</u>	<u>-----</u>	<u>75,308.00</u>
<u>Total</u>	<u>-----</u>	<u>\$670,100.00</u>

REAL ESTATE OWNED

<u>Property</u>	<u>Market Value</u>	<u>Rental Income</u>
3 Villas in Acapulco, Mex.	\$400,000.00	\$ 74,000.00
Bed and Breakfast	775,000.00	1,308.00
N. Tower Hill Rd. 13.15 acres	450,000.00	-----
<u>N. Tower Hill Rd. 15.00 acres</u>	<u>500,000.00</u>	<u>-----</u>
<u>Total</u>	<u>\$2,125,000.00</u>	<u>\$ 75,308.00</u>

The 1996 loan application reflected the following income information:

<u>Item</u>	<u>Gross Monthly Income</u>	<u>Gross Yearly Income</u>
Base Employment Income	\$33,333.33	\$399,999.96
Dividends/Interest	287.21	3,446.52
Other Income	<u>8,823.69</u>	<u>105,884.28</u>
<u>Total</u>	<u>-----</u>	<u>\$509,330.76</u>

The auditor noted that, unlike the 1992 application, the 1996 loan application did not include the villas in Acapulco, Mexico among the real estate owned by petitioner. Thus, the auditor assumed that the villas had been sold. However, with no specific sale year or sale information provided by petitioner, the auditor based the sale price for the villas on the listed market value shown on the 1992 loan application (\$400,000.00), and included such amount as income in each of the years during which the sale could have occurred (i.e., 1992 through 1996). The auditor's report noted that upon presentation of additional information, the calculation would be adjusted so as to include the income (gain), if any, from the sale of the villas only in the year of sale, as appropriate.

To calculate petitioner's estimated annual income based on the foregoing information, the auditor used the following methodology and assumptions:

<u>YEAR(S)</u>	<u>METHODOLOGY/ASSUMPTIONS</u>
1989 through 1992	income based on income amounts shown on 1992 loan application.
1993 through 1995	income based on income amounts shown on 1992 loan application, plus a 10 % increase thereto for each succeeding year.

1996	income based on income amounts shown on 1996 loan application.
1997 and 1998	income based on income amounts shown on 1996 loan application, plus a 10 % increase thereto for each year.

Using the foregoing information and methodology, the auditor calculated the following estimated income amounts for each of the years in issue:

Year	Base Employment Income	Interest and Dividend Income	Rental Income	Other Income	Income from Sale of Villas	Total Estimated Income
1989	589,992.00	4,800.00	75,308.00	-----	-----	670,100.00
1990	589,992.00	4,800.00	75,308.00	-----	-----	670,100.00
1991	589,992.00	4,800.00	75,308.00	-----	-----	670,100.00
1992	589,992.00	4,800.00	75,308.00	-----	400,000.00	1,070,100.00
1993	648,991.20	5,280.00	82,838.80	-----	400,000.00	1,137,110.10
1994	713,890.32	5,808.00	91,122.68	-----	400,000.00	1,210,821.00
1995	785,279.35	6,388.80	100,234.95	-----	400,000.00	1,291,903.76
1996	399,999.96	3,446.52	-----	105,884.28	400,000.00	909,330.76
1997	439,999.96	4,170.29	-----	116,472.21	-----	560,263.84
1998	483,999.95	4,170.29	-----	128,119.98	-----	616,290.22

On April 18, 2000, the Division issued to petitioner a Statement of Personal Income Tax Audit Changes showing New York State and New York City personal income tax deficiencies for each of the years 1989 through 1998 in the following amounts:

YEAR	NEW YORK STATE TAX	NEW YORK CITY TAX
1989	51,939.13	22,397.40
1990	51,939.13	25,742.31
1991	52,297.88	29,361.86

1992	83,797.88	47,201.86
1993	89,074.91	50,190.51
1994	94,879.65	53,478.02
1995	97,602.70	57,099.52
1996	64,262.57	40,044.11
1997	37,864.32	24,483.27
1998	41,702.13	26,982.04

The Statement of Audit Changes also reflected the imposition of interest and penalties with respect to each of the years in issue, and was accompanied by a letter explaining that the income upon which the tax was calculated had been estimated based on information supplied by third parties under subpoena. The letter also advised that petitioner had until May 16, 2000 to submit records to the Division for review. Petitioner did not respond to this statement or accompanying letter, or supply any records for review.

On July 17, 2000, the Division issued to petitioner a Notice of Deficiency asserting personal income tax due for the years 1989 through 1998 in the aggregate amount of \$1,042,341.00, plus interest and penalties pursuant to Tax Law § 685(a)(1)(A); (b), (I). This notice was based on the calculations underlying the Statement of Audit Changes described above.

Petitioner challenged the Notice of Deficiency by filing a request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services ("BCMS"). This request, dated September 28, 2000, was accompanied by New York State personal income tax returns for petitioner for the years 1989 through 1998. The returns submitted with petitioner's request for conference reported a loss (i.e., negative income) for each of the years in issue.

Petitioner opted to have the conciliation conference, scheduled for July 27, 2001, handled via correspondence rather than in person. As agreed to by the conciliation conferee, the auditor and petitioner (and confirmed in a letter dated June 25, 2001), the auditor agreed to meet with petitioner at petitioner's Park Brook Farms premises for three days, spanning July 31, 2001 through August 2, 2001, to review documents. The letter listed certain relevant documents which petitioner was to provide to the auditor in support of the information shown on the tax returns which had been filed at the time of her conciliation conference request.

Two Division auditors traveled to petitioner's Millbrook, New York location and spent three days attempting to review some 14 boxes of documents made available to them by petitioner. The auditors were unable to reconcile such documents to the information contained on the tax returns, noting that the documents in the boxes were in no particular order but rather were disorganized and haphazardly filed, included canceled checks and other information apparently pertaining to both business and personal matters, included years other than those in issue, and in some instances had suffered water damage. Ultimately, the auditors made no changes to the Notice of Deficiency as issued. In turn, by a Conciliation Order dated September 7, 2001, petitioner's request was denied and the Notice of Deficiency was sustained.

Petitioner appeared and testified at hearing, describing the purchase of the Parc Brook Farms property in 1986 using money loaned from Four Star Living, Inc., an entity in which petitioner claims to have held a 25 percent ownership interest and the title of "International Director." Petitioner's intent with respect to the Parc Brook Farms property was to develop the same by subdivision and construction of luxury homes, and ultimate sale. In 1989, the property was divided into two parcels. Petitioner had sought to subdivide the property into five lots but

this request was denied by the local planning board. Ultimately, after a moratorium period, subdivision approval for three lots was granted in 1992. Petitioner described her involvement in all aspects of the attempts to develop and operate the Parc Brook Farms premises, including pursuing subdivision approvals, designing the buildings and overseeing their construction, operating the bed and breakfast, and overseeing the horse breeding operation. The property was owned in petitioner's name and the loan applications were completed in petitioner's name.

In addition to Four Star Living, Inc. and Parc Brook Farms, Inc., petitioner alluded, though without significant detail, to her involvement and ownership interests in other corporations, including Sterling Holding Corp., Mauritius Corp., and World Class Leadership and Resources Corp., in each of which entities petitioner allegedly held an approximate 50 percent ownership interest. Petitioner did not have personal checking or savings accounts, asserted that she had no "income," and that all monies were "channeled" through the various corporations. She described the "income" as set forth on the bank loan applications as the combined income of the various corporations rather than as her income. Petitioner characterized the information on the loan applications as "related to her entities" and not to her personally.

Petitioner's 1992 loan application listed an address for petitioner at 321 East 54th Street in Manhattan, New York. This property was described as a cooperative apartment, which was "lost" in a foreclosure of the entire building in 1992. Petitioner provided no other details concerning this property, the amount of time she spent there in any given year, or the manner in which it was "lost." Petitioner claimed that she did not live in this property during any of the years in issue, since she was fully involved in her efforts to develop the Park Brook Farms property.

Petitioner also described, in limited detail, her involvement in “barter clubs.” In this regard petitioner noted, by example, that the materials for and installation of a hardwood floor would be equal to a certain number of “barter credits,” and that a period of vacation time at the villas would likewise be equal to a certain number of “barter credits.” Petitioner was thus allegedly able to obtain certain materials and labor services at Park Brook Farms in exchange for barter credits. Petitioner also noted, without further elaboration, that Sterling Holdings was the corporate entity through which the barter credits and activities were handled.

At hearing, petitioner described the villas in Mexico as originally consisting of one building which was subsequently reconfigured into three rental units. Petitioner acquired the villas by purchase in 1978, and held and rented the units until she sold them to raise cash for the Parc Brook project in 1995. In its post-hearing brief, the Division conceded that the gain from the sale of the villas should be allocated to the year 1995.¹ Accordingly, the Division removed the \$400,000.00 value it had previously included in its computation of income and tax due for the years 1992 through 1996. For 1995, (the year of sale) the Division recalculated petitioner’s income so as to include only the gain on the sale of the villas. As a result, the Division has reduced the amount of tax asserted as due for each of such years as follows:

Year	NYS/NYC Tax Initially Asserted as Due	Revised NYS/NYC Tax Asserted as Due	Amount of NYS/NYC Tax Reduction
1992	\$130,999.74	\$81,659.00	\$49,340.74
1993	\$139,265.42	\$89,925.00	\$49,340.42

¹ Petitioner provided the following information concerning the calculation of gain on the sale of the villas:

Selling Price	\$255,000.00
Cost Basis	\$101,921.00
Accum. Deprec.	<u>52,500.00</u>
Gain on Sale	<u>\$205,579.00</u>

1994	\$148,357.67	\$99,017.00	\$49,340.67
1995	\$154,702.22	\$131,267.00	\$23,435.22
1996	\$124,306.68	\$57,966.00	\$66,340.68

On November 20, 2003, a Determination was issued sustaining the Notice of Deficiency issued against petitioner. Petitioner filed an exception to the Determination and, on September 2, 2004, the Tax Appeals Tribunal issued a Decision holding that the Determination was a nullity in light of the automatic stay on proceedings imposed as a result of an allegedly still pending bankruptcy proceeding filed by petitioner. In support of its Decision, the Tribunal noted petitioner's appearance at the hearing on February 27, 2003 and her testimony that she had filed a petition in bankruptcy under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York on July 25, 2002. The Tribunal observed that petitioner had provided in evidence a copy of her petition in bankruptcy, and also testified that despite the fact that her bankruptcy proceeding was still pending, she wanted to proceed with the hearing. On exception to the Tribunal petitioner changed her position and repeatedly stated that the bankruptcy proceeding was still open and that the Division was wrong to proceed with the matter while the bankruptcy proceeding was ongoing. The Tribunal's Decision was issued upon the premise that the bankruptcy proceeding was, in fact, still ongoing, that the automatic stay was in effect and, notwithstanding petitioner's initial statement at hearing that she nonetheless wished to proceed with the hearing, such stay could not be waived by agreement of the parties. The Tribunal remanded the matter to the Administrative Law Judge for further proceedings to occur upon the earlier of either the conclusion of the bankruptcy proceedings or removal of the automatic stay.

Petitioner commenced two separate bankruptcy actions which are relevant to this proceeding. On January 7, 2000, petitioner filed a petition under Chapter 11 of the United States Bankruptcy Code. By an Order entered on September 21, 2000, the Bankruptcy Court dismissed the petition and the case was closed. On July 25, 2002, petitioner filed a petition under Chapter 7 of the United States Bankruptcy Code. At the February 23, 2003 hearing, petitioner's representative distinguished this petition from the earlier filed and dismissed Chapter 11 petition, stating that "[t]his is a new filing . . . which is still in progress."

On October 6, 2004, i.e., subsequent to the issuance of the Tribunal's Decision, the Division brought a motion to the Tax Appeals Tribunal seeking to reopen or reargue, asserting that a Discharge of Debtor had been issued with respect to petitioner's Chapter 7 bankruptcy proceeding, and that the automatic stay is no longer in effect and was not in effect on the February 27, 2003 date of the hearing held in this matter. The Division requested that Official Notice be taken of such Discharge of Debtor, and provided a certified copy of such Discharge Order with its motion papers. The Division's motion is premised on section 3000.16 of the Tribunal's Rules of Practice and Procedure which provide that a record may be reopened upon grounds of misrepresentation of an opposing party.

The Tribunal referred the Division's motion to the Administrative Law Judge for further proceedings. In turn, the parties were advised by letter of the Administrative Law Judge, dated October 26, 2004, that Official Notice would be taken of the Discharge of Debtor subject to petitioner's right to be heard in opposition. On November 16, 2004, petitioner submitted an answering affidavit and arguments in opposition to the Division's motion.

In her response to the Division's motion, petitioner offered no challenge to the existence, accuracy or authenticity of the Discharge of Debtor, or objection to the Division's request that Official Notice be taken of such Discharge. Accordingly, pursuant to section 306(4) of the State Administrative Procedure Act, Official Notice is hereby taken of a certified copy of an Order of Discharge of Debtor issued by the United States Bankruptcy Court for the Southern District of New York (Judge Cecilia G. Morris). This Discharge of Debtor specifies that it pertains to the July 25, 2002 petition filed by M. Heidi Otto under Chapter 7 of the Bankruptcy Code. The Discharge is dated November 14, 2002, and provides, in relevant part, as follows:

1. The above-named debtor [M. Heidi Otto] is released from all dischargeable debts.
2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:
 - (a) debts dischargeable under 11 U.S.C. § 523;
 - (b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4), (6) and (15) of 11 U.S.C. § 523(a);
 - (c) debts determined by this court to be discharged.
3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void in paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

The record in this matter includes a New York State Resident Income Tax Return (Form IT-201) for petitioner for each of the years 1989 through 1998. These returns were prepared by one Marc J. Rosen, a certified public accountant, and each contains his signature followed by a

typed date in the date box located next to the preparer's signature box on the face of each return (presumably indicating the date of Mr. Rosen's signature), as follows:

RETURN YEAR(S)	TYPED DATE
1989 through 1991	12/07/99
1992 and 1993	12/12/99
1994	12/17/99
1995	12/18/99
1996 and 1997	12/19/99
1998	01/04/00

Each of the returns also contains petitioner's signature. However, none of the returns include either a typed or written date in the date box located next to the taxpayer's signature box on the face of each return.

Each of the returns is date stamped as received by BCMS on September 28, 2000.

Petitioner's Request for Conciliation Conference in this matter includes the following statement:

See attached copies of state income tax returns from 1988 - through & including 1999 submitted herewith, *the originals of which were filed w/NY State DOTF on 9/14/00* (emphasis added).

On direct examination at hearing the Division's auditor explained by testimony, and confirmed by numerous entries in her audit log (which spanned the period September 1998 through July 2000) together with unanswered correspondence sent to petitioner on October 27, 1998 and December 23, 1998, that petitioner had not filed New York State personal income tax returns for the years in issue at any time during the period covered by the audit log. During this testimony, petitioner's representative specifically conceded that returns had not been filed as of the time of the audit. He stated thereafter that the returns had been filed, after completion of the

audit, in September 2000 and added, in petitioner's post-hearing brief, that "[t]he petitioner some time in 2000 filed the required Income Tax returns for the time frame in question." Petitioner alleged in her motion papers that she filed the subject returns in December 1999. She has offered no proof that the subject returns were filed at any time earlier than September 14, 2000.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge first considered the Division's motion to have official notice taken of petitioner's discharge in bankruptcy.

The Administrative Law Judge noted that petitioner's initial bankruptcy filing on January 7, 2000 under Chapter 11 was dismissed by the Court, and the case was thus closed on September 21, 2000. The Administrative Law Judge observed that while the Division's audit of petitioner was conducted during this time period, Bankruptcy Code § 362(b)(9)(A) provides that the filing of a petition in bankruptcy does not stay an audit by a governmental unit to determine tax liability. Thus, the Administrative Law Judge concluded that petitioner's Chapter 11 filing did not bar the Division's audit activities to determine petitioner's liability for the subject years, or the Division's issuance of the July 17, 2000 Notice of Deficiency. Further, the Administrative Law Judge observed that since the stay on proceedings imposed as the result of the Chapter 11 filing ended on September 21, 2000, there was no bar remaining from such Chapter 11 filing with respect to the conduct of the hearing on February 27, 2003, or issuance of the resulting Determination thereafter on November 20, 2003.

Furthermore, the Administrative Law Judge pointed out that the automatic stay imposed upon the filing of petitioner's Chapter 7 petition ended, pursuant to Bankruptcy Code § 362(c), upon the Court's issuance of the Discharge of Debtor on November 14, 2002 and, thus, was not a

bar to the conduct of the hearing on February 23, 2003, or to issuance of the resulting Determination thereafter on November 20, 2003.

The Administrative Law Judge rejected petitioner's argument that the tax debt represented by the Notice of Deficiency was discharged by the November 11, 2002 Discharge of Debtor. The Administrative Law Judge found that petitioner's claim in this regard was premised on the contention that she had submitted all of her tax returns for the ten years in issue in December 1999 (more than two years prior to her July 25, 2002 Chapter 7 bankruptcy filing) and Bankruptcy Code § 523(a)(1) is therefore not a bar to discharge of her tax debt. The Administrative Law Judge found that petitioner's allegation of a December 1999 filing of her returns was not supported by the record and was directly contradicted by petitioner's own statements. Accordingly, the Administrative Law Judge concluded that the debt represented by the Notice of Deficiency was not discharged by the November 14, 2002 Discharge of Debtor. The Administrative Law Judge found it unnecessary to address the Division's contention that the returns submitted by petitioner on September 14, 2002 did not contain sufficient data to allow calculation of the tax and thus did not constitute "filed returns."

Concerning petitioner's challenge to the Notice of Deficiency issued by the Division on July 17, 2000, the Administrative Law Judge pointed out that a Notice of Deficiency is presumed correct until the contrary is established, and the burden of showing that such a notice is incorrect rests upon the petitioner. The Administrative Law Judge held that petitioner failed to provide such evidence as would support any adjustments or reductions to the Notice of Deficiency, save for that conceded by the Division with regard to the gain on the sale of the villas in Acapulco, Mexico, and as thus amended, the notice must be sustained.

The Administrative Law Judge found that petitioner failed to file income tax returns for any of the ten years at issue, and that despite the Division's repeated requests for records and information, petitioner supplied nothing. Ultimately, the Division obtained under subpoena two loan applications made by petitioner, and in turn used the income and asset information shown thereon, as supplied by petitioner to the lending institution, as the basis for determining petitioner's income and her resulting tax liability for the years in question. Under the circumstances, the Administrative Law Judge held that the Division's resort to this method of determining petitioner's income and her tax liability was clearly appropriate.

The Administrative Law Judge noted that subsequent to the issuance of the Notice of Deficiency, petitioner submitted tax returns for the ten years in issue. The Division, in turn, sent two auditors to petitioner's premises for the purpose of reviewing petitioner's records in comparison to the returns submitted by petitioner. However, the Administrative Law Judge found that the auditors were unable to relate the records to the returns or substantiate the amounts set forth on the returns. The Administrative Law Judge also found that at the hearing, petitioner failed to provide documentation to substantiate her returns and she did not present the testimony of the accountant who reconstructed her records and prepared the after-the-fact tax returns for the subject years.

The Administrative Law Judge rejected petitioner's complaint that the Division incorrectly imposed New York City personal income tax against her, as petitioner herself informed the Division that she had owned a cooperative apartment in New York City at 321 East 54th Street before as well as during at least some portion of the audit period. The Administrative Law Judge held that the Division was justified in concluding that petitioner was properly subject to tax as a

resident of New York City and petitioner failed to establish that she was not a resident of New York City or that the Division's imposition of tax on such basis was improper.

The Administrative Law Judge also sustained the imposition of penalties as petitioner failed to file tax returns for any of the ten years in issue and failed to maintain or make available records from which her income and her tax liability could be determined.

ARGUMENTS ON EXCEPTION

Petitioner argues that the Division failed to conduct a proper audit and asserts that she provided the auditor with all necessary records to substantiate her income for the years at issue. Petitioner claims that she filed her income tax returns for the years under review in December 1999 and that they should have been the basis for calculating her tax liability. Petitioner asserts that she was never a New York City resident. Petitioner maintains that she had 14 boxes in which all of her records for the years in issue were stored, that they formed the basis of her tax returns and they should have been accepted as correct. Petitioner does not dispute her failure to file returns within the requisite time limit for any of the years at issue, but asserts that she was fully engaged during such years in attempting to develop the Parc Brook Farms property, including dealing with ongoing difficulties with the local planning board and subdivision limitations as well as attendant severe financial difficulties.

Petitioner maintains that there was no final determination in her bankruptcy proceeding and it is still ongoing. Petitioner posits that no liability for State taxes may thus be fixed and any liability she may have had should be discharged in bankruptcy.

The Division, in opposition, argues that the Administrative Law Judge correctly determined that petitioner failed to meet her burden to prove that the Notice of Deficiency was

erroneous or improper. The Division maintains that as petitioner failed to file her income tax returns for 10 years and failed to respond to the Division's request for information, the Division's resulting calculations and assertion of a deficiency were appropriate under the circumstances.

The Division also points out that petitioner was held to be a New York City resident because she provided information concerning her ownership of a condominium apartment in New York City. The Division agrees with the Administrative Law Judge that petitioner's tax debts were not discharged in bankruptcy.

OPINION

We find that the Administrative Law Judge completely and adequately addressed the issues presented to him and correctly applied the relevant law to the facts of this case. Petitioner has offered no evidence below, and no argument on exception, that would provide a basis for us to modify the determination in any respect. Thus, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of M. Heidi Otto is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of M. Heidi Otto is denied; and

4. The Notice of Deficiency dated July 17, 2000 as modified in the facts as set forth above, together with penalty and interest, is sustained.

DATED: Troy, New York
September 22, 2005

/s/Donald C. DeWitt

Donald C. DeWitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner

/s/Robert J. McDermott

Robert J. McDermott
Commissioner