STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
SHYAM AND VANDANA L. CHAWLA DETERMINATION	:	
for Redetermination of Deficiencies or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1991 and 1992.	:	DTA NOS. 813769 AND 814450

Petitioners, Shyam and Vandana L. Chawla, 2 Diaz Court #3H, Franklin Park, New Jersey 08823-1762, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1991 and 1992.

A hearing was held before Brian L. Friedman, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on March 12, 1996 at 1:15 P.M. Petitioners filed a brief on May 13, 1996. The Division of Taxation filed a letter-brief on May 20, 1996. Petitioners filed their reply brief on June 1, 1996, which date began the six-month period for the issuance of this determination. Petitioner Shyam Chawla appeared pro se, and on behalf of his wife, petitioner Vandana L. Chawla. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel).

ISSUE

Whether the Division of Taxation correctly determined that petitioners improperly adjusted for out-of-state income on their New York State nonresident income tax returns filed for the years at issue.

FINDINGS OF FACT

1. On August 8, 1994, the Division of Taxation ("Division") issued to Shyam Chawla and Vandana L. Chawla ("petitioners"), a Notice of Deficiency asserting additional personal income tax due in the amount of $991.76, plus interest, for a total amount due of $1,146.01 for the year 1991.

2. On July 10, 1995, the Division issued a Statement of Proposed Audit Changes to petitioners asserting additional personal income tax due of $825.74, plus interest, for a total amount due of $963.84 for the year 1992. The Statement of Proposed Audit Changes contained an explanation of the Division's position stating, in pertinent part, as follows:

> "The Tax Reform and Reduction Act of 1987 substantially changed the method of figuring your nonresident tax. You must first figure a base tax as if you were a New York State resident, including income, gains, losses and deductions from all sources. Then you must multiply the base tax by a fraction whose numerator is income from New York sources, and whose denominator is federal adjusted gross income.
>
> Beginning in tax year 1988, the amount shown on line 23 must be the total of the Federal Amount Column, lines 19 through 22, on Form IT-203.
>
> The subtraction from income has been disallowed as not specifically authorized under section 612 of the New York State Tax Law.
>
> Items of income on your Form IT-203 tax return must be entered in the Federal Amount Column exactly as they appear on your federal return. This column must be computed as if you were a full year resident of New York State.
>
> * * *
>
> The income percentage is computed by dividing the adjusted gross income in the New York State column on line 19 by the adjusted gross income in the federal amount column on line 19."

3. At the hearing, the Division was granted additional time to submit the statutory notice relating to the 1992 tax year. By letter dated March 14, 1996, the Division's representative, Peter T. Gumaer, Esq., advised as follows:

> "My review of the file has disclosed that there was no statutory notice for the 1992 tax year. Instead, petitioners paid the tax when they received the statement of proposed audit adjustments. Petitioners then filed the petition in DTA No. 814450 seeking a refund. There was no assessment because petitioners had already paid the tax.

> "My review has also shown that petitioners failed to file a request for refund. As a result, the Division could not issue a notice of disallowance to petitioners. Therefore, the petition in DTA No. 814450 should be treated as petitioner's request for refund, and the Division's answer should be treated as the Division's denial of same."

4. For each of the years at issue, petitioners, residents of the State of New Jersey, filed a Form IT-203 (a New York State nonresident income tax return) under the filing status "married filing joint return". During each year, petitioner Shyam Chawla was employed by the U.S. Department of the Treasury in its New York office and petitioner Vandana L. Chawla was employed by Speadmark, Inc. in New Jersey.

On line 28 of each New York State nonresident return, petitioners subtracted Ms. Chawla's New Jersey income from the "Federal Amount" on line 23 to arrive at their New York adjusted gross income. Using this New York adjusted gross income figure to determine their New York State tax, petitioners then reduced their tax liability by applying an income percentage (calculated by dividing their New York State income amount by their Federal income amount) to their New York State tax to arrive at their allocated New York State tax.

5. The Division's 1992 Publication 352 contained notice N-92-31 (see, Division's Exhibit "K") which stated, in part, as follows:

> "On December 22, 1992, the New York State Court of Appeals in Lawrence J. Brady et al., v. the State of New York et al., ruled that a nonresident married couple filing a joint federal return must use the combined income of both nonresident spouses to determine the base tax subject to the New York source income percentage allocation, even if only one spouse has New York source income, and therefore must file a joint New York State return. However, the court further held that the spouse with no New York source income cannot be required to sign the joint return and cannot be held liable for any tax, penalty or interest that may be due. This decision applies to tax years 1992 and thereafter."

SUMMARY OF THE PARTIES' POSITIONS

6. (a.) Petitioners contend that, in prior years, New York permitted the deduction of out-of-state income in computing New York income. In support of this contention, they submitted a copy of their 1982 New York State Nonresident Income Tax Return (see, Petitioners' Exhibit "1").

(b.) Petitioners allege that they received erroneous information from certain Division employees. They state that they were told that the basis of the Division's position was "the Brady decision". In its brief, however, the Division's representative states that Brady has no bearing on the present matter.

(c). Since the statute of limitations has expired for obtaining a refund from the State of New Jersey for the year 1991, petitioners claim that they can no longer receive a credit for taxes paid to New Jersey on Ms. Chawla's income which is also being taxed by New York.

(d.) Petitioners contend that the amounts of income were treated inconsistently by the Division, i.e., that different amounts were considered to be subject to tax for State and City purposes (see, Petitioners' Reply Brief at paragraph 4).

(e.) Petitioners refer, in their briefs, to "collateral estoppel" and "res judicata" as being applicable to the present matter although no basis is set forth for such contention.

(f.) Petitioners claim that the Division has failed to meet its burden of proof because it has not been able to define the terms "gross income", "adjusted gross income" and "taxable income" for New York personal income tax purposes.

7. The Division of Taxation contends:

(a.) Brady is not relevant because petitioners filed joint returns for both of the years at issue;

(b.) The New Jersey statute of limitations has no bearing in this matter;

(c.) Petitioners bear the burden of proving that they properly adjusted for New Jersey income twice, on lines 28 and 56 of their returns;

(d.) Petitioners' references to the Internal Revenue Code and to the legal principles of collateral estoppel and res judicata

have no bearing or import to the present matter.

CONCLUSIONS OF LAW

A. Tax Law § 601 (former [e][1]), in effect during the years at issue, provided as follows:

> "There is hereby imposed for each taxable year on the taxable income which is derived from sources in this state of every nonresident and part-year resident individual and trust and every nonresident estate a tax which shall be equal to the tax computed under subsections (a) through (d) of this section, as the case may be, reduced by the credits permitted under subsections (b) and (c) of section six hundred six, as if such nonresident or part-year resident individual, estate or trust were a resident, multiplied by a fraction, the numerator of which is such individual's, estate's or trust's New York source income determined in accordance with part III of this article and the denominator of which is such individual's, estate's or trust's federal adjusted gross income for the taxable year."

This subsection was originally added to the Tax Law by chapter 28 of the Laws of 1987.

B. Since Tax Law § 601 (former [e][1]) requires an initial computation of tax due to be made as if the nonresident was a resident, it is necessary to look to the appropriate sections of Article 22 of the Tax Law, applicable to resident individuals, in order to ascertain the meaning of terms.

Tax Law § 611(a) provides that the New York taxable income of a resident individual is his New York adjusted gross income less his New York deduction and exemptions.

Tax Law § 612(a) states that the New York adjusted gross income of a resident individual means his Federal adjusted gross income, as defined in the laws of the United States (Internal Revenue Code) for the taxable year, with certain modifications as specified in section 612.

C. In its brief, the Division of Taxation indicates that it is unsure as to why petitioners, in their briefs, continue to allude to the decision in Brady v. State of New York (172 AD2d 17, 576 NYS2d 896), wherein "the court ruled that a nonresident married couple filing a joint federal return must file a joint New York return." Since petitioners filed joint returns for both years at issue, the Division maintains that Brady has no bearing in the present matter.

However, it must be pointed out that, while the appeal was initially dismissed (79 NY2d 915, 581 NYS2d 667), the Court of Appeals subsequently affirmed the order of the Appellate Division (see, Brady v. State of New York, 80 NY2d 596, 592 NYS2d 955). The Court of Appeals noted that in the trial court and in the Appellate Division, plaintiffs challenged Tax Law § 651(b)(2), which required married nonresident taxpayers to file a joint New York nonresident return if they filed a joint Federal return. The Appellate Division held this provision to be unconstitutional, and the State did not appeal that determination.

The Court of Appeals, in addressing the question before it, i.e., whether in fixing the tax rate, New York could refer to spousal income included in the total adjusted gross income on the couple's joint Federal return, outlined New York's existing statutory procedure for taxing New York source income of the nonresident taxpayer. The Court stated:

> "The laws at issue are Tax Law § 601(d) and (e), sections of the Tax Reform and Reduction Act of 1987 (L 1987, ch 28) (TRARA). Under Tax Law § 601(e)(1), the tax of a nonresident is first calculated 'as if [the taxpayer] were a resident.' Thus, the nonresident's tax base (as that term is used by the parties) is determined by applying the appropriate graduated rate in Tax Law § 601(a) through (c) to the taxpayer's total income from all sources (less any statutory deductions, exemptions or credits [Tax Law §§ 606, 611(a)]). The taxpayer's total income is derived from 'New York adjusted gross income' (Tax Law § 611[a]), which is determined by reference to the taxpayer's 'federal adjusted gross income' (Tax Law § 612[a]).
>
> "Residents pay their entire tax base. For nonresidents, however, the amount is reduced by the percentage of income earned in New York compared to total income (Tax Law § 601[e][1]). Therefore, while residents and nonresidents with the same total income are taxed at the same rate, the nonresident pays tax only on the percentage of income attributable to New York." (Id., at 600, 592 NYS2d at 956-957.)

The Court held that the statutory procedure for determining a nonresident's tax on income earned in New York by taking into account New York and non-New York source income in order to calculate the tax rate to be applied to the New York income, does not violate the privileges and immunities or equal protection clauses of the U.S. Constitution since similarly situated residents and nonresidents receive equal treatment.

D. In addressing each of petitioners' contentions (see, paragraph "6"), it should first be noted that their tax treatment in 1982 is irrelevant to this proceeding inasmuch as the relevant statutes were added to the Tax Law in 1987 (see, Conclusion of Law "A"). As to their allegation that they received erroneous information from Division employees, it is clear that the information contained in the Statement of Proposed Audit Changes (see, Finding of Fact "2") and in the Division's 1992 Publication 352 (see, Finding of Fact "5") was correct. It was only when the Division's representative, in his brief filed subsequent to the hearing (and, obviously, after the filing of the petition in this matter), argued that Brady had no bearing on this case that petitioners received information which was not entirely accurate. It should be noted, however,

that the statements made by the Division's representative in his brief were in the nature of legal argument and, as such, cannot be found to have misled petitioners.

Petitioners do not allege that it was the information received by them from Division employees which led them to calculate their tax liability in the manner in which it was done for the years at issue. Despite their protestations to the contrary, it is their burden of proof, imposed pursuant to Tax Law § 689(e), to show the authority for their method of computation. The Division of Taxation is under no duty to prove that petitioners' methods were incorrect; petitioners must bear the burden of proving the correctness of their computation, and they have clearly failed to do so. They have wholly failed to show any authority for deducting petitioner Vandana L. Chawla's New Jersey income on line 28 of petitioners' returns for 1991 and 1992.

E. As to petitioners' claim concerning the statute of limitations for pursuing a refund or credit from the State of New Jersey, the Division is correct that it has no bearing in the present matter. The Division of Tax Appeals is without jurisdiction to make any ruling concerning petitioners' New Jersey tax liability. It should be emphasized, however, that petitioners' claim that the New Jersey income was taxed by New York and was, therefore, subject to double taxation is rejected inasmuch as the Brady court has ruled that New York's statutory procedure for taxing a nonresident is, in all respects, proper.

Petitioners' other contentions (see, Paragraph "6[d]" and "[e]") are unclear and, absent proof to support them, are totally without merit. Accordingly, it must be found that petitioners improperly adjusted for Ms. Chawla's New Jersey income by deducting the same on line 28 of both their 1991 and 1992 returns.

F. The petitions of Shyam and Vandana L. Chawla are denied; the Notice of Deficiency issued to petitioners by the Division of Taxation on August 8, 1994 is sustained in its entirety; and petitioners' claim for refund for the year 1992 is denied.

DATED: Troy, New York
November 27, 1996

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE