

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>GEORGE J. AND GINA M. CHRIST</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 817920</b>
for Redetermination of Deficiencies or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Years 1995 and 1996.	:	

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Petitioners, George J. and Gina M. Christ, 9 Mallard Lane, Smithtown, New York 11787, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1995 and 1996.

A small claims hearing was held before Arthur Johnson, Presiding Officer, at the offices of the Division of Tax Appeals, State Office Building, Veterans Memorial Highway, Hauppauge, New York, on August 2, 2001 at 11:00 A.M. with additional evidence to be submitted by November 23, 2001. Petitioners appeared by Eileen Gibson, E.A. The Division of Taxation appeared by Barbara G. Billet, Esq. (Fred Havenbrook).

***ISSUES***

I. Whether petitioners presented sufficient evidence to adequately substantiate the itemized deductions claimed on their 1995 and 1996 income tax returns.

II. Whether deficiencies at issue herein were due to negligence or intentional disregard of the Tax Law, thus subjecting petitioners to negligence penalties pursuant to Tax Law § 658(b).

### ***FINDINGS OF FACT***

1. Petitioners, George J. and Gina M. Christ, timely filed joint New York State resident income tax returns for the 1995 and 1996 tax years reporting thereon New York adjusted gross income of \$101,751.00 and \$93,584.00, respectively. The returns also reported New York itemized deductions of \$50,808.00 for 1995 and \$33,770.00 for 1996.

2. The Division of Taxation ("Division") corresponded with petitioners requesting that they submit documentation to verify the itemized deductions claimed for the years 1995 and 1996. Petitioners failed to respond to the Division's request. Accordingly, the Division disallowed the itemized deductions claimed on the returns as unsubstantiated, and on September 14, 1998, it issued to petitioners two notices of deficiency, one for each year at issue. For both years, the Division allowed the standard deduction instead of the itemized deductions and recomputed the amount of tax due. The Division asserted additional tax due of \$3,067.80 and \$1,525.17, respectively, for 1995 and 1996, plus negligence penalties and interest.

3. Petitioners timely protested both notices of deficiency by filing a Request for Conciliation Conference with the Division's Bureau of Conciliation and Mediation Services ("BCMS"). Petitioners submitted documentation to substantiate itemized deductions of \$19,292.00 for 1995 and \$18,751.00 for 1996. On March 24, 2000, BCMS issued a Conciliation Order which recomputed the tax due to \$2,422.94 for 1995 and \$1,069.10 for 1996. The order sustained the imposition of applicable penalties and interest.

### ***SUMMARY OF PETITIONERS' POSITION***

4. Petitioners' representative requested additional time to submit further documentation to substantiate itemized deductions. Petitioners were given until November 23, 2001 to submit any further evidence. Petitioners' representative submitted a letter in which she indicated that

petitioners agreed to the revised taxes due. However, they requested that the negligence penalties be abated. The reason given in the letter as a basis for the cancellation of the negligence penalties was that petitioners believed they had provided the Division with receipts necessary to substantiate all their itemized deductions claimed on the returns filed for 1995 and 1996. There were several mailings of documents back and forth with the Division since the initial request for records and apparently some records that would verify the deductions were lost.

***CONCLUSIONS OF LAW***

A. Tax Law § 689(e) places the burden of proof on petitioners to show that the notices of deficiency herein are erroneous. Petitioners also have the burden of proof to show reasonable cause to cancel the penalties assessed. In the instant matter, petitioners failed to sustain their burden of proof. They presented no evidence that they are entitled to claim itemized deductions for the years 1995 and 1996 in amounts greater than that allowed by the Division. They also failed to establish that the deficiencies were not due to negligence or intentional disregard of the Tax Law and it is therefore determined that the Division properly imposed negligence penalties.

B. The petition of George J. and Gina M. Christ is denied and the notices of deficiency issued September 14, 1998, as modified by the Conciliation Order dated March 24, 2000, are sustained.

DATED: Troy, New York  
December 6, 2001

/s/ Arthur Johnson  
PRESIDING OFFICER