

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition  
of  
**PAUL AND LESLIE MENNELLA**  
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.

---

DETERMINATION  
DTA NO. 818086

Petitioners, Paul and Leslie Mennella, 46 White Oak Street, Deer Park, New York 11729, 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 James Hoefler, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York on May 8, 2002 at 10:30 A.M. Petitioners appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Fred Havenbrook).

Since neither party herein elected to reserve time to file briefs, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

***ISSUE***

Whether petitioners have adduced sufficient evidence to adequately substantiate all or a portion of the itemized deductions claimed on their 1995 and 1996 income tax returns for noncash contributions and unreimbursed employee business expenses.

**FINDINGS OF FACT**

1. Petitioners herein, Paul and Leslie Mennella, filed a timely New York State resident income tax return for 1995 reporting thereon New York adjusted gross income of \$71,460.00 and subtracting therefrom New York itemized deductions of \$23,651.00. Petitioners also filed a timely New York State resident income tax return for the 1996 tax year reporting New York adjusted gross income of \$72,231.00 and New York itemized deductions of \$23,010.00.

2. The Division of Taxation (“Division”) conducted an audit of petitioners’ 1995 and 1996 income tax returns requesting that they submit documentation to support the itemized deductions claimed on each return. Petitioners complied with the Division’s request, and after reviewing the documentation submitted, the Division determined that petitioners had adequately substantiated only a portion of the itemized deductions claimed on their 1995 and 1996 income tax returns. The following table sets forth the amounts claimed, allowed and disallowed:

<b>1995</b>			
<b>Deduction</b>	<b>Claimed</b>	<b>Allowed</b>	<b>Disallowed</b>
Taxes	\$10,207.00	\$ 7,416.00	\$2,791.00
Interest	10,724.00	12,998.00	(2,274.00)
Contributions	2,119.00	-0-	2,119.00
Miscellaneous Deductions	<u>4,395.00</u>	<u>-0-</u>	<u>4,395.00</u>
Subtotal	\$27,445.00	\$20,414.00	<u>\$7,031.00</u>
Less: State & Local Income Taxes	<u>3,794.00</u>	<u>3,794.00</u>	
Total	<u>\$23,651.00</u>	<u>\$16,620.00</u>	

**1996**

<b>Deduction</b>	<b>Claimed</b>	<b>Allowed</b>	<b>Disallowed</b>
Taxes	\$12,540.00	\$7,273.00	\$5,267.00
Interest	7,997.00	7,841.00	156.00
Contributions	1,759.00	-0-	1,759.00
Miscellaneous Deductions	<u>4,256.00</u>	<u>-0-</u>	<u>4,256.00</u>
Subtotal	\$26,552.00	\$15,114.00	<u>\$11,438.00</u>
Less: State & Local Income Taxes	<u>3,542.00</u>	<u>3,542.00</u>	
Total	<u>\$23,010.00</u>	<u>\$11,572.00</u>	

3. On September 25, 1998, the Division issued two notices of deficiency to petitioners, one for each year at issue. The Notice of Deficiency for the 1995 tax year disallowed \$7,031.00 of claimed New York itemized deductions (\$23,651.00 claimed less \$16,620.00 allowed) and this adjustment resulted in additional New York State personal income tax due of \$561.00. The Notice of Deficiency for the 1996 tax year disallowed \$11,438.00 of claimed New York itemized deductions (\$23,010.00 claimed less \$11,572.00 allowed). Since the \$12,350.00 allowable standard deduction for 1996 exceeded the documented New York itemized deductions, the Division allowed the standard deduction in lieu of itemized deductions. This adjustment produced additional tax due of \$759.00. In addition to the tax due, each notice of deficiency also asserted that interest and negligence penalty were due. Petitioners have paid the tax, penalty and interest as asserted in the two notices of deficiency in full.

4. Petitioners concede the adjustments made by the Division to taxes and interest and therefore these items will be not addressed hereinafter. With respect to cash contributions, petitioners, subsequent to the issuance of the notices of deficiency, submitted to the Division canceled checks supporting cash donations of \$112.00 for 1995 and \$45.00 for 1996 and the Division has agreed to allow these amounts. With the allowances made by the Division for the

canceled checks, petitioners do not dispute that the Division properly disallowed the balance of the cash contributions claimed for 1995 and 1996. Accordingly, the only issue in dispute in this proceeding is whether petitioners have adduced sufficient evidence to adequately substantiate claimed noncash contributions and miscellaneous itemized deductions.

5. On their 1995 and 1996 income tax returns petitioners claimed noncash charitable deductions of \$324.00 and \$426.00, respectively. To support claimed noncash contributions petitioners submitted photocopies of seven undated statements from Society of St. Vincent De Paul, three of which were purportedly for the 1995 tax year while the remaining four were allegedly applicable to 1996. Also submitted in evidence were photocopies of 24 receipts (one for each month during 1995 and 1996) from St. Mary's Episcopal Church acknowledging the contribution of clothing. Attached to each receipt was an itemized list detailing each item donated together with its original purchase price. For 1995 the list contained a total of 176 items with a combined original cost of \$21,069.00. For 1996 there was a total of 236 items shown on the list with a combined original cost of \$28,202.00. Summary sheets attached to the receipts and itemized lists indicate that petitioners seek noncash deductions for the items donated in 1995 and 1996 of \$1,697.00 and \$2,095.00, respectively. At the hearing held herein, petitioners' representative indicated that petitioners were seeking noncash charitable deductions only in the amounts as claimed on the returns, to wit, \$426.00 for 1995 and \$324.00 for 1996.

6. Petitioners' returns originally claimed total job and miscellaneous expenses, before application of the 2% of Federal adjusted gross income limitation, of \$5,842.00 for 1995 and \$5,716.00 for 1996. Petitioners now claim total job and miscellaneous expenses of \$1,905.00 for 1995 and \$1,977.50 for 1996 and they have submitted various documents, such as travel logs, invoices, bills and canceled checks, to support same.

***CONCLUSIONS OF LAW***

A. Tax Law § 689(e) places the burden of proof on petitioners to show that the notices of deficiency issued by the Division are erroneous. In the instant matter petitioners have presented sufficient evidence to support noncash contributions in the amounts as claimed on their income tax returns, i.e., \$426.00 for 1995 and \$324.00 for 1996.

Petitioners have also met their burden of proof to substantiate that they incurred total job and miscellaneous expenses of \$1,905.00 for 1995 and \$1,977.50 for 1996. After applying the 2% of Federal adjusted gross income limitation petitioners are entitled to deduct \$458.00 for 1995 and \$517.50 for 1996.

B. Based on this determination petitioners' allowable New York itemized deductions for 1995 as determined by the Division are to be increased by \$996.00 (\$112.00 for cash contributions, \$426.00 for noncash contributions and \$458.00 for job and miscellaneous expenses). For 1996 allowable New York itemized deductions as determined by the Division are to be increased by \$886.50 (\$45.00 for cash contributions, \$324.00 for noncash contributions and \$517.50 for job and miscellaneous expenses).

C. The petition of Paul and Leslie Mennella is granted to the extent indicated in Conclusions of Law "A" and "B"; the Division is directed to recompute the two notices of deficiency dated September 25, 1998 to be consistent with the determination issued herein and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York  
July 25, 2002

/s/ James Hoefler  
PRESIDING OFFICER