STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
FLOYD GOODE	:	
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.	:	DECISION DTA Nos. 824140, 824179 and 824180

Petitioner, Floyd Goode, filed an exception to the determination of the Administrative Law Judge issued on November 15, 2012. Petitioner appeared *pro se*. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel). Petitioner did not file a brief in support. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Oral argument was not requested.

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

ISSUE

Whether petitioner has established entitlement to certain Schedule A itemized deductions and Schedule E losses claimed on his personal income tax returns.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for finding of fact "5," which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

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.

The 2007 deficiency resulted from the disallowance of a claimed Schedule E loss of $17,412.00 for lack of substantiation. The Division disallowed all claimed Schedule A itemized deductions because 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.

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.

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. 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.

We modify finding of fact "5" of the Administrative Law Judge's determination to read

as follows:

> 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. As such, the Division disallowed all claimed Schedule A deductions and 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 filed an amended 2009 return that claimed a refund of $5,167.00. The Division again requested substantiation and recomputed petitioner's liability that allowed a refund of $312.00.
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> 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. The Division requested, received, and reviewed documents submitted by petitioner that would substantiate itemized deductions and the Schedule E loss as claimed on the latest amended return. On December 24, 2010, the Division issued an Account Adjustment Notice that granted a refund of $1,005.66, effectively denying the balance of the refund.[1] In making this recomputation, the Division disallowed the claimed schedule E deduction 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.[2]

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

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[1] According to the May 9, 2012 affidavit of Casey Willis, a tax technician at the Division, a formal Notice of Disallowance was issued to petitioner for the year 2009, on May 9, 2012, but this notice was not placed into the record at the hearing.

[2] We modify this fact to more accurately reflect the record.

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).

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.

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.

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."

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.

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

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge explained that the Tax Law requires taxpayers to maintain sufficient records to substantiate the expenses and deductions claimed on their returns. The Administrative Law Judge also noted that the taxpayer bears the burden of proving entitlement to such expenses and deductions.

Reviewing the record, the Administrative Law Judge found that, for the years 2007, 2008 and 2009, petitioner failed to substantiate Schedule E losses regarding the apartments used by petitioner's children. Noting that such conduct was laudable, the Administrative Law Judge found that petitioner could not deduct such losses absent proving that his children paid fair rent. The Administrative Law Judge found that petitioner failed to show that his children paid fair rent. Petitioner produced no evidence as to what constituted fair rent, and no evidence that there were set rents, in that he accepted sporadic and varying rent payments from his children. As such, the Administrative Law Judge concluded that the Division properly denied these losses.

Next, the Administrative Law Judge held that for 2007, petitioner was not entitled to itemize deductions on his return because his wife filed separately and utilized the standard deduction. Tax Law § 615 (b) (1) provides that, for married couples, itemized deductions may only be claimed if each of the married individuals opts to itemize deductions on his and her return. The Administrative Law Judge then held that the Division properly denied petitioner's charitable deductions under IRC § 170 (a) (1) because petitioner failed to substantiate any of these deductions. Further, the Administrative Law Judge also found that petitioner failed to substantiate deductions for claimed job expenses, mortgage interest payments, and a casualty loss

due to a theft. The Administrative Law Judge also found that petitioner could not claim state and local real property taxes paid for his grandmother's North Carolina property.

The Administrative Law Judge granted the petition to the extent that petitioner was entitled to deductions for certain state and local real property taxes paid on property he owned in North Carolina, but otherwise denied the petition.

ARGUMENTS ON EXCEPTION

Petitioner takes exception to the determination insofar as he was denied Schedule E losses and deductions for charitable donations on his returns for 2007, 2008 and 2009. To the extent that he challenges an itemized deduction for 2007, petitioner takes exception to the conclusion that he was not entitled to itemize his deductions for that year. It is his position that he is entitled to the entirety of the Schedule E losses and charitable contribution deductions claimed on his returns for 2007, 2008 and 2009. Petitioner did not take exception to the conclusions that he failed to meet his burden regarding certain 2008 real property taxes paid for his grandmother's North Carolina property, certain job expenses and mortgage interest payments, and a 2009 casualty loss.[3]

On exception, the Division relies upon the determination of the Administrative Law Judge.

OPINION

A personal income tax is imposed on the New York taxable income of every resident (Tax Law § 601). As relevant to the current matter, New York adjusted gross income is equal the federal adjusted gross income for the same year (Tax Law § 612). Internal Revenue Code

[3] The Administrative Law Judge's conclusions regarding the deductions that are unchallenged on exception are not discussed within the Opinion section.

(hereafter "IRC," 26 USC) § 62 (a) (1) defines federal adjusted gross income as gross income minus certain deductions. Federal taxable income is then determined by subtracting either a federal standard deduction or a federal itemized deduction (26 USC § 63). If a New York resident determines federal taxable income by itemizing deductions, such resident may also utilize New York itemized deductions with certain modifications not relevant herein (Tax Law § 615 [a]). However, married individuals filing separate returns are allowed to itemize deductions on their New York returns only if both individuals elect to take a New York itemized deduction (Tax Law § 615 [b] [1]).

This matter concerns deductions taken by petitioner on his 2007, 2008 and 2009 tax returns for expenses incurred by petitioner with regard to certain rental units allowed by IRC § 62 (a) (4), and charitable contributions allowed by IRC § 170. Petitioner bears the burden of proving that he is entitled to these deductions (Tax Law § 689 [e]; ***Matter of Macaluso***, Tax Appeals Tribunal, September 22, 1997, ***confirmed sub nom Matter of Macaluso v New York State Dept. Of Taxation & Fin.*** 259 AD2d 795 [1999]). For the reasons set forth in this opinion, we find that petitioner has not met that burden.

We first examine the Schedule E expenses at issue. Schedule E expenses are subtracted from federal gross income in arriving at federal adjusted gross income (26 USC § 62 [a] [1]). Petitioner claimed certain ordinary and necessary expenses incurred in the production or collection of income, or for the management, conservation or maintenance of property held for the production of income (26 USC § 212 [1], [2]). These expenses were claimed with regard to the three-family home where petitioner and his wife lived during 2007 through 2009.

Petitioner claimed expenses on the two remaining apartments, which were used "off and on" by his son and daughter during the same period. IRC § 280A disallows such expenses as

unqualified personal use, unless petitioner is able to prove that his children utilized their respective apartments as their primary residences, and that they each paid fair rental value for their respective apartment (26 USC § 280A [d] [2], [3]).

By petitioner's own admission, his children lived in the subject apartments only "off and on." Thus, petitioner failed to prove that the units were the primary residences of either his son or his daughter. Furthermore, petitioner introduced no evidence into the record as to the amount of rents paid, and did not attempt to prove that the amounts paid constituted fair rentals. As noted by the Administrative Law Judge, the only evidence in the record regarding the rent amounts were petitioner's Schedule E forms, which were indicative of rental payments of less than $200.00 for 2007, and less than $100.00 for 2009.[4] Petitioner's admission that such payments were erratic also indicates that his children's rent was not fair value. The evidence in record falls short of meeting petitioner's burden that he did not utilize the apartments for personal uses during 2007, 2008 and 2009.

We next examine the itemized deductions claimed by petitioner in order to reduce his federal adjusted gross income to arrive at his federal taxable income. For 2007, petitioner was not entitled to *any* itemized deductions because his wife, who filed separately, claimed a standard deduction for that year (Tax Law § 615 [b] [1]). As such, petitioner is not entitled to an additional adjustment for that year. The only itemized deductions remaining at issue are the amounts of petitioner's charitable contributions for the years 2008 and 2009. As provided under IRC § 170, itemized deductions are allowed for certain charitable contributions. However, IRC

[4] After the record was closed and the exception was filed, petitioner attempted to submit evidence into the record. By letter dated March 1, 2013, the Secretary to the Tax Appeals Tribunal acknowledged receipt of petitioner's correspondence of February 15, 2013. This letter informed petitioner that evidence submitted after the record is closed, will not be considered by the Tax Appeals Tribunal in rendering its decision (***see e.g. Matter of Schoonover***, Tax Appeals Tribunal, August 15, 1991).

§ 170 (a) (1) allows such deductions only to the extent that the charitable contributions can be verified.

In this matter, petitioner produced no evidence indicating that the claimed charitable contributions had been made. Petitioner's unsubstantiated testimony that he made cash contributions to several churches in North Carolina is insufficient to prove that the charitable donations occurred. Absent clear and convincing evidence, we must conclude that for the years 2007, 2008 and 2009, the Division properly denied petitioner's itemized deductions for the charitable contributions.

As discussed above, petitioner failed to meet his burden of proving entitlement to certain Schedule E losses or Schedule A itemized deductions (Tax Law § 658 [a]; 20 NYCRR 158.1 [a]). We do not disturb the Administrative Law Judge's conclusion that, for the years 2008 and 2009, petitioner is entitled to adjustments for state and local taxes paid for his North Carolina property.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Floyd Goode is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Floyd Goode is granted to the extent that the Division is ordered to account for petitioner's 2008 and 2009 payment of state and local real property taxes made for his North Carolina property, but is otherwise denied.

4. The Notice of Deficiency, dated December 27, 2010, pertaining to the year 2007, is sustained; the Notice of Deficiency, dated December 27, 2010, pertaining to the year 2008, as

modified by paragraph "3" above, is sustained; and the Account Adjustment Notice, dated December 24, 2010, related to the 2009 refund disallowance, as modified by paragraph "3" above, is sustained.

DATED: Albany, New York
October 17, 2013

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner