

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
PATRICIA MARINELLO : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 825995
Personal Income Tax under Article 22 of the Tax Law :
and the Administrative Code of the City of New York :
for the Year 2011. :

Petitioner, Patricia Marinello, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2011.

A hearing was held before Herbert M. Friedman, Jr., Administrative Law Judge, in Albany, New York, on January 12, 2015 at 10:30 A.M., with all briefs to be submitted by May 7, 2015, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Leo Gabovich).

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed itemized deductions.

FINDINGS OF FACT

1. During 2011, petitioner, Patricia Marinello, was employed as an educational consultant and salesperson for World Book, Inc. (World Book). Petitioner's customers included libraries and educational institutions throughout the metropolitan New York area, Long Island, and

Westchester county. Her responsibilities included selling computer databases and printed materials. In addition, petitioner spent a majority of her time training librarians, teachers and administrators at her customers' facilities in the use of World Book products.

2. Petitioner operated out of a home office that contained a telephone and fax machine with separately dedicated lines. She spent the majority of her time, however, visiting potential and existing customers. Petitioner also had a cell phone that she used for work.

3. Petitioner electronically filed her 2011 New York State resident income tax return and claimed a filing status of single. On it, petitioner listed a federal adjusted gross income of \$105,004.00, and a New York State itemized deduction of \$84,797.00, which included job expenses and miscellaneous deductions of \$35,551.00 in excess of 2 percent of adjusted gross income. Petitioner sought a refund of \$1,397.00 on the return.

4. By letter dated May 7, 2012, the Division of Taxation (Division) advised petitioner that her return had been selected for review. The letter requested that petitioner provide documentation to substantiate her claimed itemized deductions for real property and sales taxes paid, and job expenses and miscellaneous deductions.

5. Petitioner responded by providing the Division with certain documents in an attempt to substantiate her deductions. Following a review thereof, the Division nonetheless disallowed petitioner's New York itemized deductions in full and recomputed her 2011 tax liability using the standard deduction of \$7,500.00. As a result of the recomputation, on December 5, 2012, the Division issued to petitioner Notice of Deficiency L-038672073-2, which assessed tax of \$3,897.76, penalty of \$264.95, and interest.

6. For purposes of this matter, petitioner has challenged the Division's disallowance of several of her claimed job expenses and miscellaneous deductions. They include the following:

a) educational expenses of \$9,031.45; b) lodging expenses of \$642.88; c) mileage expenses of \$6,282.50; d) tolls and parking of \$1,789.00; e) telephone expenses of \$3,800.24, and f) storage unit expenses of \$2,988.00.

7. To substantiate the claimed educational expenses, petitioner submitted a Form 1098-T for the year 2011 from Long Island University (LIU) reflecting a qualified tuition payment in the amount of \$6,695.00. She also submitted a \$55.45 receipt for a library science textbook and various other documents, including a syllabus, related to LIU courses in library science. Petitioner testified that she took two courses in library science at LIU during the year at issue. She emphasized that these courses were directly related to her career and allowed her to better serve her clients. In particular, petitioner stated that the courses allowed her to speak at a more sophisticated level with her customers, which, in turn, gave her an advantage over her competition.

8. To substantiate the claimed expenses for lodging, petitioner submitted a series of receipts from various hotels in which she stayed during 2011. The total expenses reflected on the receipts exceeded the lodging expenses reflected in Finding of Fact 6. According to petitioner, these expenses were incurred to allow her to either visit a potential or existing customer or attend a job related conference.

9. Petitioner attempted to substantiate her mileage expenses as job related by submitting two receipts from an auto repair shop in Oyster Bay. The receipts reflected work performed on two separate dates on her vehicle. The first, dated December 6, 2010, listed the mileage on her car as 163,276, while the second, dated January 4, 2012, listed her mileage at 185,426. Petitioner testified that all of the mileage incurred during the period between the receipts was job related.

Petitioner did not present a mileage log or other documentary evidence on this issue into the record.

10. Petitioner submitted a stack of copies of toll receipts totaling \$1,628.00 to substantiate her claim to that expense. She testified that all of the receipts were incurred in the performance of her job, but failed to present a log or other substantiation for the trips in which they were incurred.

11. To substantiate the claimed telephone expenses, petitioner submitted a series of telephone bills for three separate telephone numbers. The bills indicated payment of the incurred charges in the amount of \$3,800.24. She testified that all three were exclusively business lines.

12. During the year at issue, petitioner rented a 10 foot by 10 foot storage unit. According to petitioner's testimony, she rented the unit exclusively as part of her business. She explained that the unit afforded her a secure storage facility for the numerous books and paper materials she obtained, stored, and eventually delivered to her customers. The monthly charge for the unit was \$249.00 and petitioner submitted statements from the storage company evidencing payment of \$2,988.00.

13. During the audit, petitioner provided the Division with a letter dated June 29, 2012 from Bev Ecker, World Book's Director of Human Resources, which, in pertinent part, reads as follows:

"The purpose of this letter is to inform you that as an outside sales representative at World Book Inc. [sic], Pat Marinello incurs outside expenses that are necessary in order to perform her job. She receives commission on the sales in her assigned territory and is not reimbursed for expenses by World Book, Inc."

SUMMARY OF THE PARTIES' POSITIONS

14. Petitioner maintains that she adequately substantiated her claimed unreimbursed job and miscellaneous expenses, in particular those involving education, telephone service, the storage unit, and automobile mileage. She insists that all were necessary to allow her to perform her job.

15. The Division argues that petitioner is not entitled to her claimed educational expenses as they were not ordinary or necessary for performance of her job. Furthermore, the Division asserts that the remaining expenses were properly disallowed for lack of substantiation.

CONCLUSIONS OF LAW

A. When the Division issues a Notice of Deficiency to a taxpayer, a presumption of correctness attaches to the notice, and the burden of proof is on the taxpayer to demonstrate that the deficiency assessment is erroneous by clear and convincing evidence (*see Matter of O'Reilly*, Tax Appeals Tribunal, May 17, 2004; *see also* Tax Law § 689[e]).

B. Under Tax Law § 612(a), the adjusted gross income of a New York resident is federal adjusted gross income, with certain modifications not applicable in this case. Section 62(a)(1) of the Internal Revenue Code (IRC) defines the federal adjusted gross income as an individual's gross income minus certain deductions. Among the deductions permitted are deductions for expenses which are "ordinary and necessary" for the production or collection of income (*see* IRC § 212[1]). In order to maintain the deduction on her New York return, the taxpayer has the double burden of (1) demonstrating entitlement to the deduction and (2) substantiating the amount of the deduction (*see* Tax Law § 658[a]; § 689(e); 20 NYCRR 158.1; *Matter of Macaluso*, Tax Appeals Tribunal, September 22, 1997 *confirmed* 259 AD2d 795 [1999]).

Along those lines, petitioner was required to maintain adequate records of items of her income, loss and deduction for the years in issue (Tax Law § 658[a]; 20 NYCRR 158.1[a]).

C. Petitioner has met her burden in this case with regard to a portion of her claimed educational expenses. She produced a Form 1098-T evidencing \$6,695.00 in tuition payments to LIU during 2011. She also provided a receipt for \$55.45 for the purchase of a library science textbook. Petitioner credibly testified that these payments were for two graduate level classes in library science and that the subject matter of the classes was directly applicable to her job with World Book. She convincingly explained how the classes were necessary to allow her to compete against other resource salespeople and properly train her customers. In sum, petitioner is entitled to \$6,750.45 of her claimed educational expenses.

D. Petitioner has also met her burden with regard to her claimed telephone expenses. She produced statements from her providers evidencing payment of \$3,800.24 for two land lines and one cell phone line. Moreover, she buttressed this proof with her credible testimony that all three telephones were used exclusively for her business. Clearly, the telephones were a necessary feature in her job. Consequently, petitioner is entitled to her claimed telephone expenses of \$3,800.24.

E. Similarly, petitioner has met her burden with regard to the claimed expenses for the rental of a storage unit. She provided statements for the payments made on the unit rental in 2011. Additionally, she candidly testified that she needed to rent the unit solely to assist her with her business as her home possessed neither the space nor the safety required to store materials to be provided to her customers. As a result, petitioner is entitled to her claimed expense of \$2,988.00 for the storage unit.

F. Petitioner is also entitled to her claimed lodging expense in the amount of \$642.88. She provided receipts to substantiate the expense and each bears a notation linking it with a particular job related conference or travel. In addition, she adequately explained the necessity of attending the conferences in the course of her job.

G. Petitioner has not, however, met her burden with regard to her claimed mileage and toll expenses. The scant evidence offered for mileage - the odometer readings listed on auto repair work orders from December 2010 and January 2012 - falls far short of the standard for this deduction. Taxpayers are required to keep detailed records substantiating their use of automobiles for business purposes (IRC § 274[d][4], as amended by Pub L 98-369 § 179[b][1]). Specifically, a log reporting total mileage, business mileage, commuting mileage and other personal mileage driven is required (Treas Reg § 1.274-5T). Here, petitioner's documentation for mileage does not include the required log or any detail whatsoever, despite the fact that the record was left open for a period after the hearing to allow petitioner to provide such evidence. Similarly, although petitioner provided toll receipts, they are not linked to any specific job-related travel by a log or other documentation. Simply put, the necessary evidentiary detail is missing. Hence, there is no basis to disturb the Division's disallowance of the automobile and toll expenses.

H. The Notice of Deficiency also assesses penalties in the amount of \$264.95. The notice, however, does not identify the nature of the penalties or the Tax Law section authorizing them. Moreover, the Division's answer does not identify the nature of the penalties. Without identifying the type of penalties assessed, the Division did not allow petitioner to properly address that issue. Nevertheless, petitioner has presented sufficient evidence to clearly indicate

an absence of willful neglect (*see* 20 NYCRR 2392[d][5]). As a result, reasonable cause for abatement exists on this record and the penalties are canceled.

I. The petition of Patricia Marinello is granted to the extent of Conclusions of Law C, D, E, F and H, and the Division is directed to modify the notice of deficiency accordingly. In all other respects, the petition is denied.

DATED: Albany, New York
October 8, 2015

/s/ Herbert M. Friedman, Jr.
ADMINISTRATIVE LAW JUDGE