

JILL B. POSKAITIS

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IN THE

vs.

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MARYLAND TAX COURT

COMPTROLLER OF THE TREASURY

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No. 05-**IN**-OO-0160

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MEMORANDUM AND ORDER

The matter having come before the court for a hearing and the matter having been heard and considered by the court at a hearing held on September 15, 2005. The following are my findings and conclusions of law as stated on the record at the conclusion of the hearing:

The allocation of deductions between a husband and wife where one is a resident of the State of Maryland and the other is not is determined by the Tax-General Article, Section 10-218(b) Annotated Code of Maryland, which limits the taxpayer deductions to the sum of the "individual's federal itemized deductions." The Comptroller General's Office has not issued definitive guidance to further guide a taxpayer. This court, therefore, has determined that a taxpayer must be reasonable in her attempts to determine her "individual's federal itemized deductions." The taxpayer must first determine if she may take a particular deduction when it has been paid from joint marital funds. This court holds that a taxpayer must have individual income as documented in the tax return that clearly exceeds the deductions taken. In a case where each spouse has income that exceeds the deductions, either spouse may take the deductions.

The taxpayer in this case had income that clearly exceeded the deductions taken and showed her reasonableness by subtracting from her total federal deductions, deductions which could be attributed to her husband's business or education, and by requesting advice from the Comptroller's Office. This court specifically decides that a taxpayer is not required to maintain her own separate checking account to deposit her income, nor is she required to then make the payments related to the deductions from a separate account to prove reasonable behavior.

A taxpayer similarly situated to the one in this case could be found to have acted reasonably under the additional guidance contained in COMAR 03.04.02.16 C (2)(b) (recently issued in 2005) by meeting the reasonable standards identified above.

It is this **10th** day of **October, 2005**, by the Maryland Tax Court ORDERED that the assessment of tax and interest entered by the Comptroller against the Petitioner, be and the same is hereby **ABATED**.