

POOR
QUALITY
THE FOLLOWING
DOCUMENT (S)
ARE
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

BUREAU OF LAW

MEMORANDUM

*Income Tax Determination**A. Z**Schrijver, Adolf L.
& Karen*

TO: State Tax Commission

FROM: Solomon Sles, Hearing Officer

SUBJECT: ADOLF L. AND KAREN SCHRIJVER

1959 Assessment No. B-834675 -
Article 16

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on August 19, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the taxpayers, who are on a cash basis, are entitled to a normal deduction of claimed farming loss arising out of the expenditure for the rental and feed of certain cows for breeding purposes of which the taxpayer, Adolf L. Schrijver, was to receive the offspring.

On December 30, 1959, the taxpayer, Adolf L. Schrijver, entered into an agreement with Cohen & Katz for the rental of six pure-bred Charolais breed gravid cows at an advanced rental of \$2,000 per cow, plus \$500 per cow annually for feed and care for the term of one year. The taxpayer was to receive the offspring from said cows. The cows and their subsequent calves remained on a ranch near Weslaco, Texas. Pursuant to the aforementioned agreement, the taxpayer issued two separate checks both dated December 31, 1959, one for \$12,000 representing the rental of the cows and the other for \$3,000 representing the cost of feed and care. The taxpayer testified that he intended to raise the livestock for breeding purposes and to eventually realize a profit from the sale thereof.

The taxpayers filed joint Federal and New York State income tax returns for the year 1959. They reported their income on a cash calendar year basis. The taxpayer, Adolf L. Schrijver, was a stock broker and copartner in the stock brokerage firm of Schrijver and Co. located at 37 Wall Street, New York, New York. On his income tax return for the year 1959, the taxpayer, Adolf L. Schrijver, reported, as his distributive share of net income in Schrijver and Co., the sum of \$85,585.18. He reported on Schedule

"A" that he was engaged in the business of farming and reported no receipts from said business but claimed a deduction of \$12,000 for breeding of livestock and \$3,000 for feed. The aforementioned sum of \$15,000 was deducted by the taxpayers from the gross income reported by them. On February 3, 1961, the Department of Taxation and Finance made an additional assessment against the taxpayers for the year 1959 disallowing the deduction of \$15,000 claimed for breeding and feeding expenses on the ground that it constituted a capital expenditure not deductible from normal income.

Income realized on the sale of livestock held for sale in the ordinary course of business is subject to normal income tax. (Leonard C. Kling, 15 T.C. 998; M. D. Eagle, Jr., 25 T.C. 169; 1955, 11 T.C.M. 891, Dec. 19, 1955(M)) The cost of feeding and raising livestock held for sale in the ordinary course of business may be treated as an expense deduction, insofar as such cost represents an actual outlay. (Section 122, Personal Income Tax Regulations under Article 16 of the Tax Law) Livestock held for breeding purposes are considered capital assets. Sales of work or breeding animals or culls were found to result in a capital gain. (Thomas M. Lancaster v. Seaford, (DC) 52-1 USTC, paragraph 9254, 9255; 1952-1 CB 141; United v. U. S., (DC) 52-1 USTC, paragraph 9114, 101 F. Supp. 873)

In the case of U. S. v. Frister, 203 F. 2d 538, reversing 102 F. Supp. 640, it was held that the taxpayer, who maintained two herds, one for breeding and one for sale in the ordinary course of business, could not deduct, as ordinary business expenses for Federal income tax purposes, cost of all purchases of cattle without distinguishing for which herd such purchases had been made.

In Ager Realty Co. v. Commissioner, 132 F. 2d at page 314, it is stated:

"A capital expenditure is not deductible as an 'ordinary' business expense. It is well-settled that money paid out for the acquisition of something of permanent use or value in one's business is a capital investment and not deductible from income as 'ordinary' business expense."

In CGH, standard Federal Income Tax Reporter, 1966, V. 2, page 29,052, paragraph 2219, it is stated:

"311 - Amounts expended for transportation, feeding enroute, etc. incidental to the importation of livestock for breeding purposes are capital expenditures. IT-2433, VII-2 C.B. 130."

"Amounts expended in purchasing work, breeding or dairy animals are regarded as investments of capital, and shall be depreciated unless such animals are included in an inventory in

accordance with Section 1.61-4" (Federal Income Tax Regulations, Section 1.162-12). "Amounts expended in the development of farms, orchards and ranches, prior to the time when the productive state is reached, may be regarded as investments of capital" (ibid.). Pursuant to the agreement between Adolf L. Schrijver and Cohen & Katz, the taxpayer was entitled only to the offspring from the Charolais cows, and they were not in a productive state until after they were weaned, at least not until 1960.

Article 122 of the Personal Income Tax Regulations under Article 16 of the Tax Law, in effect for 1959, provides, in part, that "amounts expended in purchasing work, breeding or dairy animals are regarded as investments of capital."

Although this case is covered by Article 16 of the Tax Law, the provisions of the Federal Income Tax Law are applicable (Marx v. Bragalini, 6 N Y 24 322).

I am of the opinion that the amount paid for the rental and feed of the cows was a capital expenditure not deductible from normal income within the intent and meaning of Section 360, Article 16, of the Tax Law.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

/s/

SOLOMON SIES

Deputy Officer

SS:dv

Enc.

November 13, 1968

11-19-68

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE APPLICATION
OF
ADOLF L. AND KAREN SCHRIJVER
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1939

The taxpayers herein, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1939, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York, on the 19th day of August, 1962, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Adolf L. Schrijver, appeared personally and was represented by Brady, Gaffrey and Heller, Esqs., by Irving Ballen, Esq. of Counsel, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Adolf L. and Karen Schrijver, filed a joint resident personal income tax return for the year 1939; that the taxpayers regularly kept their records and reported their income, for income tax purposes, on a cash calendar year basis; that at all of the times hereinafter mentioned, the taxpayer, Adolf L. Schrijver, was a stockbroker and copartner in the stock brokerage firm of Schrijver & Co., located at 37 Wall Street, New York, New York; that on said income tax return the taxpayer Adolf L. Schrijver reported, as his distributive share of net income from Schrijver & Co., the sum of

\$85,585.18; that the aforementioned taxpayer indicated on Schedule "A" (Income or Loss from Business or Profession) that he was engaged in the business of "farming", reported no receipts from said business but claimed a deduction of \$12,000.00 for breeding of livestock, and \$3,000.00 for feed; that the aforementioned sum of \$15,000.00 was deducted by the taxpayers from the gross income reported by them; that on February 3, 1961, the Department of Taxation and Finance made an additional assessment against the taxpayers for the year 1959 (Assessment No. B 894675) disallowing the deduction of \$15,000.00 claimed for breeding and feeding expenses on the ground that it constituted a capital expenditure not deductible from normal income.

(2) That on December 30, 1959, the taxpayer, Adolf L. Schrijver, entered into an agreement with Cohen & Katz for the rental of six pure-bred Charolais breed gravid cows for a period of one year, whereby the aforementioned taxpayer was to acquire ownership of the offspring of said cows; that the taxpayer was required to pay an advanced rental of \$2,000.00 per cow, plus \$300.00 per cow for annual feed and care; that pursuant to said agreement, the taxpayer, Adolf L. Schrijver, issued two separate checks, each dated December 31, 1959, one for \$12,000.00 representing the annual rental of said cows, and the other for \$3,000.00 representing the annual payment of feed and care; that the cows and their subsequent offspring remained on a ranch near Union, Texas; that the offspring did not become productive until after their weaning period sometime in 1960; that the offspring were held by the taxpayer for breeding purposes.

(3) That the taxpayer intended to raise a herd of Charolais cattle for breeding purposes and eventually realize a profit therefrom.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

DISCUSSION:

(A) That the claimed expenses of the taxpayer, Adolf L. Schrijver, in the sum of \$12,000.00 for the rental of the aforementioned cows constituted an investment of capital in accordance with the provisions of Section 122 of the Personal Income Tax Regulations under Article 16 of the Tax Law, then in effect for the year 1939; that the sum of \$3,000.00 claimed as expenses for the feed and care of the cows and their offspring until after they were weaned and became productive constituted an investment of capital.

(B) That the deduction by the taxpayer, Adolf L. Schrijver, in the sum of \$15,000.00 from normal income did not constitute a proper allowable deduction for the year 1979 within the intent and meaning of Section 360(1), Article 16, of the Tax Law, then in effect.

(C) That, accordingly, the assessment for the year 1939 (Assessment No. B 834675) is correct; that said assessment does not include any tax or other charge which could not have been lawfully demanded and that the taxpayers' application for revision or refund filed with respect thereto be and the same is hereby denied.

Dated: Albany, New York this 22nd day of November, 1968.

STATE TAX CONSIDERATION

/s/

JOSEPH H. MURPHY

[illegible]

/s/

A. BRUCE MANLEY

[illegible]

1990