

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

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK & EDITH SCHMUCKLER

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(*)~~ 22 of the
Tax Law for the Year ~~(*)~~ 1965.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of January, 1975, she served the within Notice of Decision ~~(on Determination)~~ by (certified) mail upon JACK & EDITH SCHMUCKLER

~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Jack Schmuckler
3671 Hudson Manor Terrace, Apt. 9-A
Bronx, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ ~~(*)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

7th day of January, 1975

Janet Mack

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK & EDITH SCHMUCKLER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year ~~(x)~~ 1965.

State of New York
County of Albany

JANET MACK

, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of December, 1974, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon JACK & EDITH SCHMUCKLER

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. and Mrs. Jack Schmuckler
1 Sickles Street, Apt. E-16
New York, New York 10040

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~(of)~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

23rd day of December, 1974.

Martha Sunaro

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK & EDITH SCHMUCKLER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(xx)~~ 22 of the
Tax Law for the Year ~~(xx)~~ 1965.

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of December, 1974, she served the within Notice of Decision (~~xxx~~~~Redetermination~~) by (certified) mail upon MEYER ROSH, ESQ.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Meyer Rosh, Esq. Stein, Schwartz, Chesir & Rosh 565 Fifth Avenue New York, New York 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

23rd day of December, 1974.

Martha Sunas

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
December 23, 1974

**Mr. and Mrs. Jack Schmuckler
1 Sickles Street, Apt. E-16
New York, New York 10040**

Dear Mr. and Mrs. Schmuckler:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~(a)~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JACK & EDITH SCHMUCKLER :
for a Redetermination of a Deficiency : DECISION
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1965. :

Jack and Edith Schmuckler filed a petition pursuant to section 689 of the Tax Law for a refund of amounts paid under a Notice of Deficiency dated February 24, 1969, in personal income tax imposed under Article 22 of the Tax Law for the year 1965.

In lieu of a hearing, petitioners have, through their attorney, Meyer Rosh, Esq., of Stein, Schwartz, Chesir & Rosh, submitted the petition to the State Tax Commission on the file of the Income Tax Bureau as supplemented by documents submitted by petitioners.

The said file and documents have been duly examined and considered.

ISSUE

The issue in this case is whether medical expenses are deductible when the taxpayer receives sums in settlement of a lawsuit for the personal injuries giving rise to those medical expenses.

FINDINGS OF FACT

1. Petitioner, Edith Schmuckler, suffered grave personal injuries including a partial amputation of both legs, as a result of an automobile accident on December 2, 1963. She was hospitalized for about two years.

2. In 1965, petitioners' deducted \$12,429.38 on their New York return as medical expenses out of total medical expenses paid of \$13,381.66. This included \$7,070.50 for doctor bills and \$5,977.55 for hospital bills accumulating since 1963, because of Mrs. Schmuckler's injuries.

3. In previous years, petitioners had incurred and paid hospital bills of \$18,236.35 and other bills of about \$4,000.00 because of Mrs. Schmuckler's injuries. However, they had deducted only \$966.00 in 1963 and \$4,700.66 in 1964. It can be presumed that some of these previous years' bills were compensated for by medical insurance.

4. A lawsuit for recovery of damages for the personal injuries to Mrs. Schmuckler was instituted in Supreme Court, New York County. The complaint asked for damages of \$600,000.00. The defendants were insured for \$150,000.00. This suit was never tried but a settlement was arrived at in the amount of \$135,000.00. A general release was received with no amount being identified for medical expenses. The net recovery to petitioners, after legal fees and costs, was \$87,959.44.

5. The refund requested of the payment under the deficiency notice relates to only that part of the deficiency denying a deduction of medical expenses for 1965 of \$12,479.38 and the

adding to income of amounts received allegedly in reimbursement of medical expenses deducted in previous years of \$966.00 for 1963 and \$4,700.66 for 1964. A part of the deficiency relating to the deduction of state and local income taxes is not contested. The deficiency notice as issued amounted to \$1,669.24 with interest of \$286.22 to February 24, 1969, all of which has been paid.

CONCLUSIONS OF LAW


The medical expenses here in issue may be allowed. Medical expenses are deductible in the current year only to the extent that they are not compensated for by insurance or otherwise. (I.R.C. §213(a)). Any amount received which is "attributable to" medical expenses deductible in prior years are included in income even if such amount is received as compensation for personal injuries. (I.R.C. §104(a)). (U.S. Treas. Reg. 1.213-1(g); Zeeman v. U.S., 395 F2d 861). It has been held that a current medical deduction is not allowable where hospital bills are satisfied out of the proceeds of the settlement of negligence actions in cases where by stipulation a defendant, in effect, reimbursed itself before paying the plaintiff (Benjamin D. Morgan, 55 TC 376), and similarly it is not allowable where, by reason of a validly filed hospital lien, the defendant's payments were first applied to existing hospital bills before being released unconditionally to the plaintiff. (Daniel T. Cooney, 1971 Tax Court memo dec. 201.) In neither of these cases did the taxpayer have any "out-of-pocket" expenses. Generally where compensation for injuries does not specifically designate medical expenses such compensation will be considered not related to such expenses. (Robert O. Deming, 9 U.S. Tax Court 383.)

DECISION

The deficiency is recomputed to be \$16.50 plus interest to February 24, 1969 of \$2.83 for a total of \$19.33. Said sum is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
December 23, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance

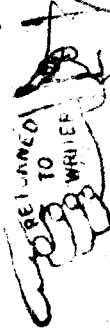
STATE CAMPUS
ALBANY, N. Y. 12227

N. Y. N. Y. 10040
(MOVED NOT FORWARDABLE)

DEC 26 1974

Handwritten: NAIN
12/26

Mr. and Mrs. Jack Schmuckler
1 Sickles Street, Apt. E-16
New York, New York 10040



CERTIFIED

No. 202051

MAIL



N. Y. N. Y. 10040
(MOVED NOT FORWARDABLE)

Name DEC 26 1974
Post Office
JAN 10 1974