

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID & ANNE SCHILLER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (22) of the :
Tax Law for the Year (1963) or Period(s) 1963.:

State of New York
County of Albany

Bruce Batchelor, 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 8th day of April, 1977, she served the within
Notice of Decision by (certified) mail upon David & Anne Schiller

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. & Mrs. David Schiller
99-06 58th Avenue
Rego Park,
Queens, NY 11368

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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

8th day of April, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 8, 1977

TELEPHONE: (518) ~~457-1723~~

Mr. & Mrs. David Schiller
99-06 58th Avenue
Rego Park
Queens, NY 11368

Dear Mr. & Mrs. Schiller:

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

Please take further notice that pursuant to
Section(s) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: ~~Taxing Bureau's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID & ANNE SCHILLER	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Year 1963.	:	

Petitioners, David and Anne Schiller, residing at 99-06 58th Avenue, Rego Park, Queens, New York 11368, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1963. (File No. 3523220).

On August 10, 1976, petitioners, David and Anne Schiller, advised the State Tax Commission in writing that they waived a small claims hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file.

ISSUE

Was interest income, determined by a Federal audit to have been constructively received during the year 1963, includable as income in the year of constructive receipt?

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Internal Revenue Service determined that a portion of payments received by petitioner, David Schiller, during 1963 was interest income.

2. The Income Tax Bureau assessed the petitioners, David and Anne Schiller, in accordance with the Federal audit adjustment.

3. Petitioners, David and Anne Schiller, paid the additional tax due and applied for a refund on the grounds that the interest income was reported on their 1965 income tax returns.

4. That the interest income was constructively received by petitioners, David and Anne Schiller, during 1963 as determined by the Internal Revenue Service and that such income was to be reported in 1963 which was the year of constructive receipt.


5. That the petitioners, David and Anne Schiller, claim for refund of personal income tax in the amount of \$43.32 is denied and the Notice of Refund Disallowance issued February 22, 1971 is sustained.

DATED: Albany, New York
April 8, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER