

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NORMAN and RISSA KORNBLITH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) or Period(s) 1972. :

State of New York
County of Albany

John Huhn , 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 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon Norman and Rissa
Kornblith ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

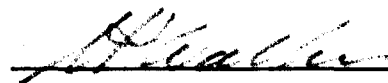
as follows: Norman and Rissa Kornblith
12 Roman Acres Drive
Garnerville, New York 10923

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

20th day of September , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

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Taxes under Article (x) 22 of the :
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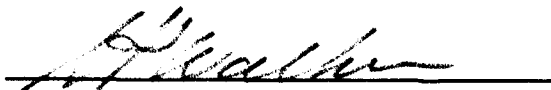
State of New York
County of Albany

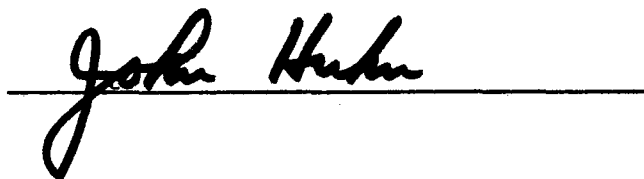
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of September , 1978 , she served the within
Notice of Decision by (certified) mail upon Frank De Gioia
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frank De Gioia
45 Acorn Lane
Plainview, New York 11803
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

20th day of September , 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

September 20, 1978

Mr. and Mrs. Norman Kornblith
12 Roman Acres Drive
Garnerville, New York 10923


Dear Mr. and Mrs. Kornblith:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(a)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

NORMAN and RISSA KORNBLITH :

DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1972. :

:

Petitioners, Norman and Rissa Kornblith, 21 Roman Acres Drive, Garnerville, New York 10923, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 10816).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 18, 1977 at 9:15 A.M. Petitioner Norman Kornblith appeared pro se and for his wife, petitioner Rissa Kornblith. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the amounts reported on the 1972 New York State combined income tax return filed by petitioners as capital loss, employee business expense, medical and dental expenses and sales tax are correct.

FINDINGS OF FACT

1. Petitioners, Norman and Rissa Kornblith, filed a New York State combined income tax return for 1972, on which Norman Kornblith reported a capital loss of \$1,000.00, employee business expenses of \$3,316.68, and itemized deductions for medical and dental expense and sales tax of \$1,345.92 and \$693.00, respectively.

2. On July 16, 1974, the Income Tax Bureau issued a Statement of Audit Changes against Norman and Rissa Kornblith, on which a loss on the sale of capital assets of \$1,000.00 was reduced to \$500.00, deductions claimed for employee business expense of \$3,316.68 and medical and dental expense of \$1,345.92 were disallowed, and a deduction for sales tax of \$693.00 was reduced to \$400.00, on the grounds that they were not substantiated. On October 27, 1975, the Income Tax Bureau accordingly issued a Notice of Deficiency against petitioners, asserting additional personal income tax of \$479.69, plus interest of \$101.68, for a total due of \$581.37.

3. Norman Kornblith submitted documentation showing that he was the sole owner of the common stock, the sale of which generated the long-term capital loss shown on petitioners' return.

4. Records submitted by Norman Kornblith to support the claimed employee business expense consisted of restaurant guest checks or receipts which indicated a total expense of \$223.04. These records did not indicate the business purpose of the expenditures.

5. Petitioners submitted documentary evidence to substantiate a medical and dental expense deduction of \$384.27 (after the application of the percentage limitation pursuant to section 213 of the Internal Revenue Code).

6. Based on petitioner Norman Kornblith's corrected adjusted gross income and the optional state sales tax table, petitioner's corrected sales tax deduction is \$423.00.

CONCLUSIONS OF LAW

A. That petitioner Norman Kornblith was the sole owner of stock, the sale of which generated the long-term capital loss claimed on his return. Since he filed a separate return, said loss is limited to a maximum capital loss deduction of \$500.00 within the meaning and intent of section 612(f) of the Tax Law.

B. That petitioner Norman Kornblith has failed to sustain the burden of proof required (pursuant to section 689(e) of the Tax Law) to support the employee business expenses claimed on his return.

C. That the deductions allowed for medical and dental expense and sales tax are \$384.27 and \$423.00, respectively, rather than zero and \$400.00 as allowed in the Notice of Deficiency. Therefore, the Income Tax Bureau is directed to reduce the Notice of Deficiency from \$479.69 (plus interest) to \$437.95 (plus interest).

D. That petitioners, Norman and Rissa Kornblith, filed separate returns on a combined form and none of the items adjusted were used in computing the personal income tax of Rissa Kornblith. Therefore, the Income Tax Bureau is directed to modify the Notice of Deficiency by eliminating Rissa Kornblith's name from the deficiency.

E. That the petition of Norman and Rissa Kornblith is granted to the extent provided in Conclusion of Law "C" and "D," above, but that it is in all other respects denied. The Notice of Deficiency (as modified) is sustained, together with such additional interest as may be lawfully owing.

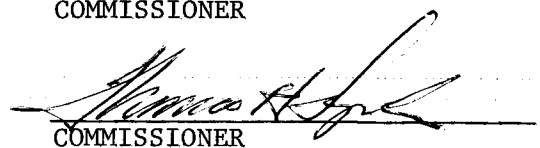
DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER