

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Roberta Hartmann :
a/k/a Roberta Schoeck : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1971 & 1972. :
_____ :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of April, 1980, he served the within notice of Decision by certified mail upon Roberta Hartmann, a/k/a Roberta Schoeck, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

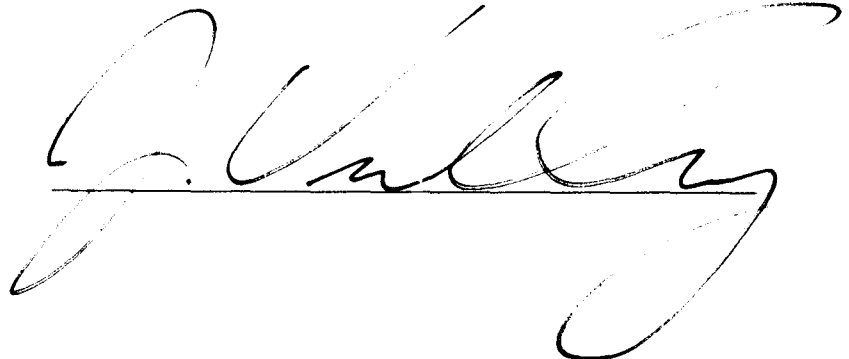
Roberta Hartmann
a/k/a Roberta Schoeck
605 Drew La., Clearing in the woods
Carmel, NY 10512

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of April, 1980.

Janne Knapp



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

April 11, 1980

Roberta Hartmann
a/k/a Roberta Schoeck
605 Drew La., Clearing in the woods
Carmel, NY 10512

Dear Ms. Hartmann:

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERTA HARTMANN a/k/a : DECISION
ROBERTA H. SCHOECK :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1971 and 1972. :
:

Roberta Hartmann a/k/a Roberta H. Schoeck, 605 Drew Lane, Clearing-in-the-Woods, Carmel, New York 10512, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 15177).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 22, 1978 at 1:30 P.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether petitioner is liable for personal income tax on additional partnership income from Somers Pine Shop for the years in issue.

FINDINGS OF FACT

1. Richard and Roberta Schoeck filed New York State combined income tax returns (forms IT-208 - for resident married persons filing a joint Federal return who elect to file separate New York State returns) for 1971 and 1972.
2. Roberta Schoeck and Richard Schoeck were partners in Somers Pine Shop, a retail furniture store located at Route 100, Somers, New York. Each had a 50 percent interest in the partnership.

3. Somers Pine Shop filed New York State partnership and unincorporated business tax returns for 1971 and 1972. Richard Schoeck and Roberta Schoeck executed consents extending the period within which to assess additional personal income or unincorporated business taxes to April 15, 1976.

4. As a result of a field audit, on January 23, 1976, the Income Tax Bureau issued a Statement of Audit Changes against the partnership, Somers Pine Shop, imposing additional unincorporated business tax of \$939.10 for 1971 and 1972, on the ground that unexplained deposits represented additional taxable income. The Bureau also disallowed certain expenses as being unsubstantiated. The consent to findings on the Statement of Audit Changes was signed by Richard Schoeck. Petitioner testified that the name "Roberta Schoeck" on said consent was not her signature. The deficiency against the partnership was paid.

5. On April 12, 1976, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency against petitioner, Roberta Schoeck Hartmann, imposing additional personal income tax for 1971 and 1972. This was done on the basis of additional distributive share of partnership income attributable to petitioner as a result of the audit of the partnership, as more fully set forth in Finding of Fact "4", supra.

6. Petitioner presented no evidence to refute the audit findings of additional partnership income for the years in issue.

CONCLUSIONS OF LAW

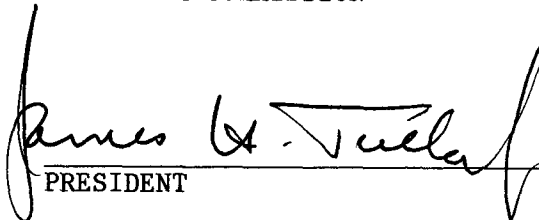
A. That petitioner, Roberta Hartmann a/k/a Roberta Schoeck, has not sustained the burden of proving that she was not liable for personal income tax on the distributive share of partnership income attributed to her for 1971 and 1972 (section 689(e) of the Tax Law).

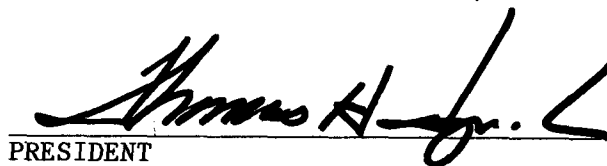
B. That the petition of Roberta Hartmann a/k/a Roberta Schoeck is hereby denied.

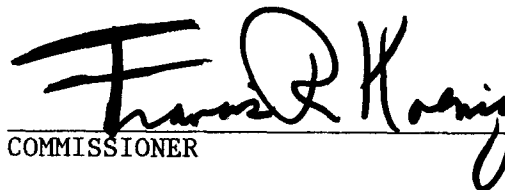
DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION


PRESIDENT


PRESIDENT


COMMISSIONER