

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
M. Daniel Kammin :  
and Shirley Kammin : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law :  
for the Years 1971 & 1972. :

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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 28th day of November, 1980, he served the within notice of Decision by certified mail upon M. Daniel Kammin, and Shirley Kammin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

M. Daniel Kammin  
and Shirley Kammin  
752 Janice Court  
Wyckoff, NJ 07481

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  
28th day of November, 1980.

*Deborah A. Bank*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
M. Daniel Kammin :  
and Shirley Kammin :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law :  
for the Years 1971 & 1972. :

AFFIDAVIT OF MAILING

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Martin Lebowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

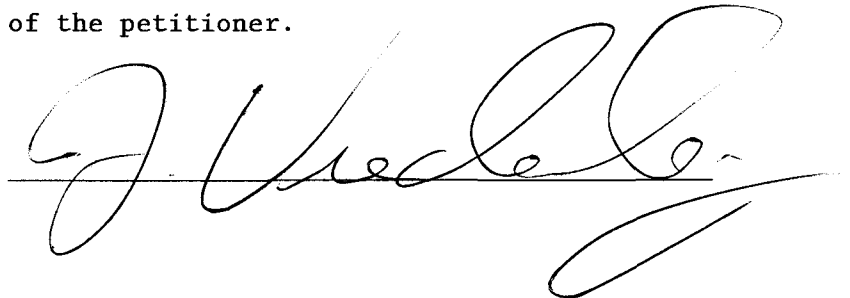
Mr. Martin Lebowitz  
875 Ave. of the Americas  
New York, NY 10001

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  
28th day of November, 1980.

Estorah A. Bank



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

November 28, 1980

M. Daniel Kammin  
and Shirley Kammin  
752 Janice Court  
Wyckoff, NJ 07481

Dear Mr. & Mrs. Kammin:

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 & 722 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  
Martin Lebowitz  
875 Ave. of the Americas  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

M. DANIEL KAMMIN and SHIRLEY KAMMIN :

DECISION

for Redetermination of a Deficiency or for Refund :  
of Personal Income and Unincorporated Business Taxes :  
Under Articles 22 and 23 of the Tax Law for the :  
Years 1971 and 1972.

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Petitioners, M. Daniel Kammin and Shirley Kammin, 752 Janice Court, Wyckoff, New Jersey 07481, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1971 and 1972 (File No. 14988).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 31, 1978 at 9:40 A.M. Petitioners appeared by Martin Lebowitz, CPA. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

#### ISSUES

I. Whether petitioners are liable for additional personal income and unincorporated business taxes pursuant to an audit which determined, based on petitioners' increase in net worth and on petitioners' living expenses, that petitioners had additional taxable income for 1971.

II. Whether petitioners are liable for additional personal income and unincorporated business taxes pursuant to an audit which disallowed deductions taken in 1972 for business losses on scrapped rental television sets and for certain business expenses for transportation.

FINDINGS OF FACT

1. Petitioners, M. Daniel Kammin and Shirley Kammin filed New York State income tax nonresident returns for 1971 and 1972.

2. Petitioner M. Daniel Kammin filed New York State unincorporated business tax returns for 1971 and 1972.

3. On April 14, 1976, a Notice of Deficiency was issued for personal income tax against petitioners in the amount of \$731.96 in tax, plus interest for 1971 and \$113.01 in tax and \$9.79 in penalty, plus interest for 1972.

4. On April 14, 1976, a Notice of Deficiency was issued for unincorporated business tax against petitioner M. Daniel Kammin in the amount of \$679.95 in tax, plus interest, for 1971 and \$175.76 in tax and \$10.98 in penalty, plus interest, for 1972.

5. The deficiencies were based on audit findings:

- (a) determining, on the basis of petitioners' increased net worth and petitioners' living expenses, that petitioners had additional 1971 taxable income, and
- (b) disallowing deductions taken in 1972 for business losses on scrapped rental television sets and for certain business expenses for transportation. (An additional adjustment in the amount of \$1,008.00 for certain accrued expenses was later withdrawn by the Audit Division.)

6. Petitioners owned and operated a small unincorporated television rental business at 216 East 181st Street, Bronx, New York, throughout 1971 and 1972.

7. In 1972, petitioners stored rental television sets which their small Bronx store could not accommodate in a garage rented for \$10.00 a month in Teaneck, New Jersey, not far from petitioners' residence.

8. In 1972, petitioners drove two vehicles between Teaneck and the Bronx for use in delivering television sets to customers, transferring sets between storage and store, and transporting sets needing repair to their Teaneck home where Mr. Kammin repaired them. While portable, the television sets were too large for transport on public conveyances.

9. Petitioners established at the hearing that their disallowed \$585.00 business vehicular expense deduction for 1972 was attributable to the need for a second vehicle in their business due to the transfer of stored rental television sets between storage and their store and to the transport of television sets from their store to their home workshop for repair, and that it was not attributable to petitioners' commutation.

10. In 1972, petitioners had occasion in their business to scrap television sets which were beyond repair.

11. Petitioners established at the hearing that the disallowed 1972 deduction of \$231.00 for scrapped rental television sets represented scrapped stock removed from inventory in 1972.

12. Most of petitioners' increase in net worth in 1971 was the result of a number of revenue-producing circumstances not involving taxable income: Proceeds from fire and automobile insurance claims, bar-mitzvah and birthday presents to petitioners' children and gifts to petitioners from their parents.

13. Petitioners' personal living expenses in 1971 were approximately \$10,200.00, not \$12,000.00 as estimated on audit.

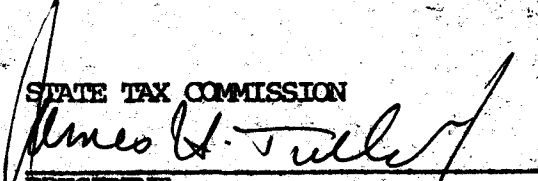
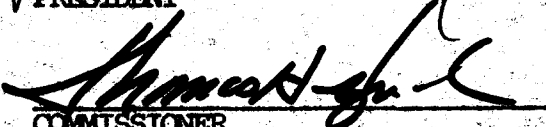

14. Petitioners established at the hearing that a combination of nontaxable revenue in 1971 and their level of 1971 living expenses were consistent with having reported all of the taxable 1971 income on which they had paid all New York State taxes due thereon.

CONCLUSIONS OF LAW

- A. That petitioners' 1971 increase in net worth masked no unreported taxable income in 1971.
- B. That petitioners properly reported and paid taxes on all of their taxable 1971 New York State income.
- C. That petitioners properly deducted \$585.00 in non-commutation New York-New Jersey business expenses for transportation in 1972.
- D. That petitioners properly deducted as a business loss in 1972, the \$231.00 value of the rental television sets scrapped in 1972.
- E. That the petition of M. Daniel Karmin and Shirley Karmin is granted and the notices of deficiency are cancelled.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER