

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lawrence & Ida Schwartz :
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 Year 1974. :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Lawrence & Ida Schwartz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence & Ida Schwartz
5 Lester Ave.
Freeport, NY 11520

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
21st day of March, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
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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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Allan Corn the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

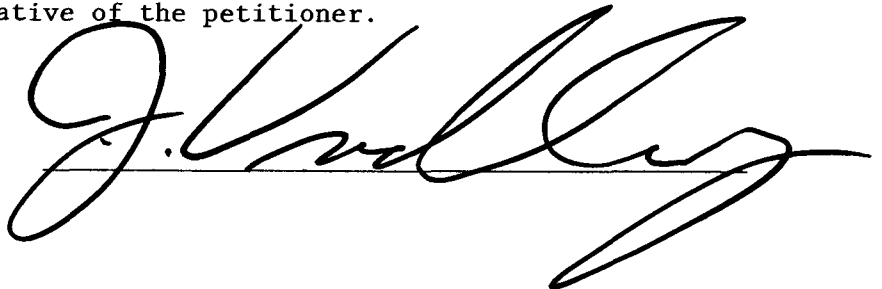
Mr. Allan Corn
1 Edgewood Circle
Orangeburg, NY 10962

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
21st day of March, 1980.

Joanne Knapp



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

March 21, 1980

Lawrence & Ida Schwartz
5 Lester Ave.
Freeport, NY 11520

Dear Mr. & Mrs. Schwartz:

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
Allan Corn
1 Edgewood Circle
Orangeburg, NY 10962
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LAWRENCE SCHWARTZ and IDA SCHWARTZ	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

Petitioners, Lawrence and Ida Schwartz, 5 Lester Avenue, Freeport, New York 11520, 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 1974 (File No. 19932).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 20, 1979 at 9:15 A.M. Petitioners appeared by Allan Corn, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner, Lawrence Schwartz, is entitled to deductions, claimed on his 1974 New York State Combined Income Tax Return, for employee business expenses and alimony payments.

II. Whether petitioner, Ida Schwartz, is entitled to deductions, claimed on her 1974 New York State Combined Income Tax Return, for employee business expenses.

FINDINGS OF FACT

1. Petitioners, Lawrence and Ida Schwartz, filed a New York State Combined Income Tax Return for the year 1974.

2. On May 23, 1977, the Audit Division issued a Statement of Audit Changes to petitioner, Lawrence Schwartz, disallowing interest expense of \$93.66 and miscellaneous deductions of \$1,835.39 on the grounds that said deductions were not substantiated. Employee business expenses of \$2,110.00 were also disallowed in total on the grounds that petitioner would have been reimbursed by his employer for such expenses had he submitted receipts.

The Audit Division also issued a Statement of Audit Changes to petitioner, Ida Schwartz, disallowing interest expense of \$44.08, miscellaneous deductions of \$863.72 and employee business expense of \$1,137.50 for failure to substantiate such expenses.

The disallowances at issue are employee business expenses and that portion of miscellaneous deductions representing alimony payments of \$1,680.00 to Linda Schwartz, the former wife of petitioner, Lawrence Schwartz.

3. On May 23, 1977, in accordance with the aforementioned statements of audit changes, the Audit Division issued notices of deficiency against petitioners, Lawrence and Ida Schwartz, asserting additional personal income tax for the year 1974 in the amounts of \$411.27 and \$192.23, respectively, plus interest.

4. Petitioner Lawrence Schwartz was employed as a salesman by Palm Beach Company, a manufacturer of men's clothing. Petitioner contended that he was reimbursed \$12.00 per day for meals by his employer; however, his actual meal expenses were in excess of that amount. Petitioner further contended that he was not reimbursed for expenses incurred entertaining clients at his home.

Petitioner failed to submit any documentary or other substantial evidence to show that he incurred excess employee business expenses or that if so incurred, such expenses would not be reimbursed by his employer.

5. A divorce decree, dated October 17, 1973, provided that petitioner Lawrence Schwartz pay to Linda Schwartz alimony of \$140.00 per month. Petitioner,

Lawrence Schwartz, submitted substantial documentary evidence to show that he made monthly payments to Linda Schwartz for the year 1974.

6. Petitioner Ida Schwartz was employed by Community School District #8 as a special assistant to the superintendent. The job duties required her to travel to district schools to supervise educational programs, confer with staff and community leaders, and attend various meetings. Petitioner contended that she used her personal automobile to accomplish these responsibilities. Petitioner is not reimbursed by her employer for expenses incurred for such usage nor is she reimbursed for related expenses such as parking or tolls.

The Audit Division allowed employee business expenses of \$937.50, based on 6,250 miles of business use. Petitioner failed to submit documentation for business related miles in excess of this amount.

7. Petitioner Ida Schwartz incurred employee business expenses for parking and tolls in the amount of \$63.00 for the year 1974.

CONCLUSIONS OF LAW

A. That petitioner Lawrence Schwartz has not sustained the burden of proof required by section 689(e) of the Tax Law with respect to his deduction for employee business expenses in the amount of \$2,110.00.

B. That in accordance with Finding of Fact "5", petitioner Lawrence Schwartz is entitled to a miscellaneous deduction of \$1,680.00 for alimony payments.

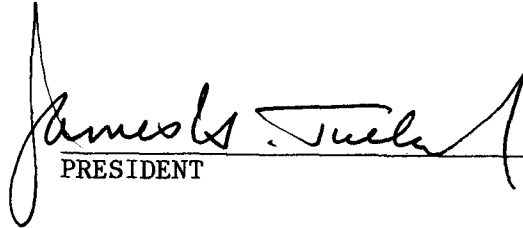
C. That petitioner Ida Schwartz is entitled to an additional deduction for employee business expenses of \$63.00 in accordance with Finding of Fact "7". That petitioner Ida Schwartz failed to sustain the burden of proof necessary to support the balance of employee business expenses that were disallowed by the Audit Division within the meaning and intent of section 689(e) of the Tax Law.

D. That the petitions of Lawrence and Ida Schwartz are granted to the extent indicated in Conclusions of Law "B" and "C"; that the Audit Division is hereby directed to modify the notices of deficiency issued May 23, 1977; and that, except as so granted, the petitions are in all other respects denied.

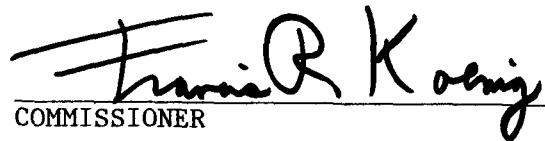
DATED: Albany, New York

MAR 21 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER