

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Abraham & Jessie Kreiss :
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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Abraham & Jessie Kreiss, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abraham & Jessie Kreiss
2950 Sunrise Lakes Dr. W.
Sunrise, FL 33322

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
27th day of November, 1981.

Armi A. [Signature]

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Murray Weinstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Murray Weinstein
111 Surrey Dr.
New Rochelle, NY 10804

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
27th day of November, 1981.

Annie P. Hegelund

J. Vredenburg

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

November 27, 1981

Abraham & Jessie Kreiss
2950 Sunrise Lakes Dr. W.
Sunrise, FL 33322

Dear Mr. & Mrs. Kreiss:

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
Murray Weinstein
111 Surrey Dr.
New Rochelle, NY 10804
Taxing Bureau's Representative

STATE TAX COMMISSION

DECISION

ISSUE

FINDINGS OF FACT

1. Petitioner, Jessie Kreiss filed a Notice of Change in taxable income (form IT-115), for 1974 resulting in a claim for refund of personal income tax in the amount of \$2,277.08.
2. Petitioner, Jessie Kreiss' claim for refund was based on an overstatement of reported adjusted gross income for subject year.

3. On May 14, 1979, the Audit Division disallowed the claim in full on the ground that the federal determination of federal taxable income under section 1341 of the Internal Revenue Code did not change the federal adjusted gross income or deductions as originally reported for 1974. Accordingly, the Audit Division issued a formal notice of disallowance of claim under date of September 24, 1979.

4. Petitioner, Jessie Kreiss, contends that for subject year she included in adjusted gross income monies received from the sale of taxi cab medallions which did not belong to her.

That immediately upon receipt of said monies, other parties who claimed an interest in the taxicab medallions instituted a civil action against her, seeking a recovery of their proportional interest in said monies. The action was finally adjudicated sometime in 1977 wherein petitioner was ordered to return a share of the receipts.

5. As a result of the civil action, petitioner filed a claim for refund with the Internal Revenue Service for 1974. The petitioner's claim for refund was disallowed by the Internal Revenue Service for 1974 because the money was not repaid by her until 1977. And, in lieu thereof, the Internal Revenue Service allowed her a refund for 1977 under the claim of right doctrine [I.R.C.1341].

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of petitioners, Abraham Kreiss and Jessie Kreiss was not overstated for 1974. That pursuant to section 612(a) of the Tax Law, the New York State adjusted gross income of a resident individual means his Federal adjusted gross income as defined in the laws of the United States for the taxable year with certain modifications, which modifications are not applicable in the instant matter.

B. That petitioners have failed to meet the burden of proof imposed by section 689(e) of the Tax Law in establishing that the reported Federal adjusted gross income was incorrect for 1974.

C. That the petition of Abraham Kreiss and Jessie Kreiss is denied and the formal refund denial by the Audit Division dated September 24, 1979 is sustained.

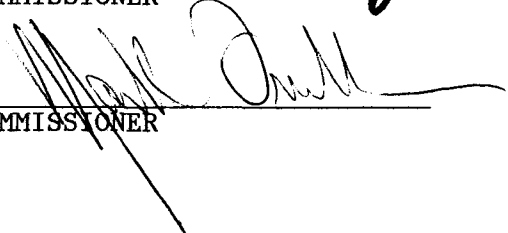
DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER