

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Henrietta Lebowitz

:

:

: 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 :
1973 - 1975.

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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Henrietta Lebowitz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henrietta Lebowitz
8 Grant Ave.
Glens Falls, NY 12801

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
6th day of November, 1981.

James P. Haglund

Jay Vredenburg

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

November 6, 1981

Henrietta Lebowitz
8 Grant Ave.
Glens Falls, NY 12801

Dear Ms. Lebowitz:

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	:	
	:	
HENRIETTA LEBOWITZ	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1973, 1974 and	:	
1975.	:	

Petitioner, Henrietta Lebowitz, 8 Grant Avenue, Glens Falls, New York 12801, 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 1973, 1974 and 1975 (File No. 29512).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on May 1, 1981 at 10:45 A.M. Petitioner, Henrietta Lebowitz, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether the petitioner's New York State tax liability based upon a Tax Court Memorandum Decision of Henrietta Lebowitz v. Commissioner is proper.

FINDINGS OF FACT

1. On January 30, 1980, the Audit Division issued a Notice of Deficiency for 1973, 1974 and 1975 imposing personal income tax of \$446.72, plus penalties and interest. The Notice was issued based on the Tax Court Memorandum Decision of April 20, 1978 which found the following:

(a) That the filing status of a wife who was living apart from her husband and did not file joint return with him, was that of a "married individual filing separate returns".

(b) Where a husband and wife held property as tenants by the entireties, only one-half of the net rental income was includable in the income of a wife who was living apart from her husband, even though she received all of the rental income from the property since the husband waived his share of the rental income.

(c) That periodic payments made by a husband to his wife, who was living apart from him, were taxable to her as alimony because they represented amounts that a court retroactively determined were made under his marital support obligation.

2. The petitioner Henrietta Lebowitz did not file New York State income tax returns for the years 1973, 1974 and 1975.

3. At the hearing the petitioner's testimony indicated that she was discontent with the Tax Court Memorandum Decision. However, no evidence or documentation was submitted to establish that the tax court decision was improper, erroneous or inaccurate.

CONCLUSIONS OF LAW

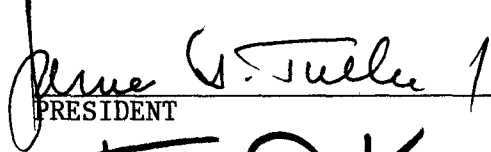
A. That petitioner, Henrietta Lebowitz, has failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that the Tax Court Memorandum Decision of April 20, 1978 (Henrietta Lebowitz v. Commissioner, 37 TCM 687) was improper, erroneous or inaccurate.


B. That the petition of Henrietta Lebowitz is denied and the Notice of Deficiency issued January 30, 1980 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER