

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Mortimer & Marcia Schulman :  
: 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 Year :  
1974

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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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Mortimer & Marcia Schulman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mortimer & Marcia Schulman  
165 W. 91st St., Apt. 14-H  
New York, NY 10024

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  
15th day of May, 1981.

Conni A. Haglund

J. Vredenburg



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

May 15, 1981

Mortimer & Marcia Schulman  
165 W. 91st St., Apt. 14-H  
New York, NY 10024

Dear Mr. & Mrs. Schulman:

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

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

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Petitioners, Mortimer Schulman and Marcia Schulman, 165 West 91st Street, Apt. 14-H, New York, New York 10024, 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. 23131).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1980 at 1:15 P.M. Petitioner Marcia Schulman appeared pro se and for her husband, petitioner Mortimer Schulman. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether legal fees earned by petitioner Mortimer Schulman may be split between he and his wife.

FINDINGS OF FACT

1. Petitioners, Mortimer Schulman and Marcia Schulman, timely filed a New York State Combined Income Tax Return for the year 1974 (Form IT-208). On this return, petitioner Mortimer Schulman reported business income of \$8,460.00, while petitioner Marcia Schulman reported business income of \$8,405.00.



2. On July 31, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting that an additional \$366.88 of personal income tax was due together with interest. Said Notice of Deficiency was based on the disallowance of the splitting of business income "[S]ince the business income was from husband's services as a lawyer, this income must be reported on his return". As petitioner Marcia Schulman did not have income in excess of her exemption, the additional tax due was recomputed on a joint return basis as this resulted in the lowest possible tax due. Additional adjustments made for unreported Federal audit changes and the disallowance of a deduction for life insurance premiums were not contested by petitioners and are not at issue herein.

3. During the year 1974, petitioner Mortimer Schulman earned fees from a private law practice conducted at 115 Central Park West, New York, New York. His wife, petitioner Marcia Schulman, worked full time at the law office performing services as a clerk, typist and secretary.

4. At the hearing held herein, petitioner Marcia Schulman testified that her weekly salary was set at \$200.00 and that said salary was not paid on a regular basis but would be received in lump sums as the need arose. No deduction for social security taxes, unemployment insurance and Federal, State and City income taxes were taken from her salary. No documentary evidence was submitted to substantiate payment of the alleged salary.

5. On cross examination it was brought out that Mrs. Schulman's 1974 return reported business income of \$8,405.00 and that a salary of \$200.00 per week would generate a yearly gross of \$10,400.00. Mrs. Schulman addressed this apparent contradiction with the explanation that she had "averaged" her salary to arrive at a \$200.00 per week figure and that her actual weekly salary in 1974 was less than \$200.00.



6. The 1974 Federal Schedule "C" (Profit or Loss From Business or Profession as a Sole Proprietorship) listed only petitioner Mortimer Schulman's name and indicated that all business income from the practice of law was attributable to him.

7. No argument, testimony or documentary evidence was adduced at the hearing alleging the existence of a partnership between petitioners.

CONCLUSIONS OF LAW

A. That petitioners, Mortimer Schulman and Marcia Schulman, have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that Marcia Schulman was a salaried employee of her husband or that a valid partnership existed between petitioners. Also, petitioners have failed to show that wages or a distributive share of partnership income was paid or credited to petitioner Marcia Schulman.

B. That the petition of Mortimer Schulman and Marcia Schulman is denied and the Notice of Deficiency issued July 31, 1978 is hereby sustained.


DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER