

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joachim & Patricia Schulz-Heik :

: 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

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Joachim & Patricia Schulz-Heik, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joachim & Patricia Schulz-Heik
35 Vine Rd.
Larchmont, NY 10538

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
5th day of June, 1981.

Connie A. Haglund

J. Vredenburg

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

June 5, 1981

Joachim & Patricia Schulz-Heik
35 Vine Rd.
Larchmont, NY 10538

Dear Mr. & Mrs. Schulz-Heik:

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	:	
	:	
JOACHIM SCHULZ-HEIK and PATRICIA SCHULZ-HEIK	:	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, Joachim Schulz-Heik and Patricia Schulz-Heik, 35 Vine Road, Larchmont, New York 10538, 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. 23794).

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 30, 1980 at 1:15 P.M. Petitioner Joachim Schulz-Heik appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioners are entitled to deduct employee business expenses of \$3,245.00 and a rental loss of \$3,331.00.

FINDINGS OF FACT

1. Petitioners, Joachim Schulz-Heik and Patricia Schulz-Heik, timely filed a New York State resident income tax return for the year 1974. On said return petitioners claimed a deduction for employee business expenses of \$3,245.00 and a rental loss of \$3,331.00.

2. On April 4, 1978, the Audit Division issued a Notice of Deficiency against petitioners, asserting that for the year 1974, additional personal income tax of \$1,084.80 was due, together with interest. The aforementioned

Notice of Deficiency was based on a Statement of Audit Changes dated August 4, 1977 wherein claimed employee business expenses were disallowed in full, all rental expenses were disallowed thereby creating rental income of \$385.00 and a claimed \$1,000.00 capital loss was decreased to \$729.00. Petitioners have conceded the correctness of the \$271.00 adjustment to capital losses and, therefore, this adjustment is not at issue herein.

3. The employee business expense of \$3,245.00 was comprised of auto expenses of \$1,659.00 (11,060 miles at \$.15 per mile) and office-in-home expenses of \$1,586.00. Petitioners have not submitted a diary or any other form of documentary evidence to support the business miles driven. With respect to the claimed office-in-home expenses, petitioners have not adduced by proper documentary evidence the portion of the personal residence used for business purposes, that an office-in-home was regularly used and the payment of expenses for heat and light, repairs and maintenance and oil. Included in office-in-home expenses were deductions for mortgage interest of \$426.00 and real estate taxes of \$269.00.

4. Petitioners, in December 1972, purchased a one-half interest in rental property located in Winhall, Vermont. Federal Schedule E, Part II, Rent and Royalty Income, indicated petitioners' 50 percent share of rent receipts amounted to \$385.00, while their share of depreciation and other expenses totaled \$3,716.00. Documentary evidence has been submitted to substantiate the depreciation expense of \$1,165.00 and other expenses of \$135.00.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they are entitled to a deduction of \$3,245.00 for employee business expenses. However, petitioners are entitled to claim as itemized deductions, pursuant to sections 163 and 164 of the

Internal Revenue Code, that portion of mortgage interest (\$426.00) and real estate taxes (\$269.00) included in the disallowed deduction for employee business expenses. Accordingly, while petitioners are denied the deduction for employee business expenses totaling \$3,245.00, they are entitled to increase claimed itemized deductions for interest and taxes by \$426.00 and \$269.00, respectively.

B. That petitioners have established by proper documentary evidence rental expenses of \$1,300.00. The balance of claimed rental expenses are disallowed as petitioners have not sustained the burden of proof to show, by proper documentary evidence, the payment of said expenses. Accordingly, petitioners are entitled to deduct a rental loss of \$915.00 (1,300.00 - 385.00).

C. That the petition of Joachim Schulz-Heik and Patricia Schulz-Heik is granted to the extent indicated in Conclusions of Law "A" and "B" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 5 1981


PRESIDENT


COMMISSIONER


COMMISSIONER