

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Richard S. Shenier :  
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 :  
1968. :

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

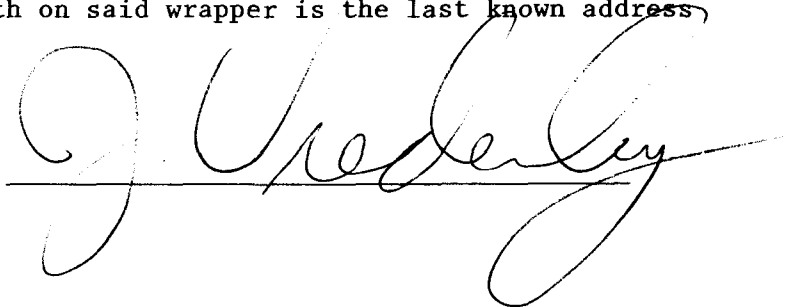
Richard S. Shenier  
70-25 Yellowstone Blvd.  
Forest Hills, NY 11375

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.





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

November 27, 1981

Richard S. Shenier  
70-25 Yellowstone Blvd.  
Forest Hills, NY 11375

Dear Mr. Shenier:

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	:	
	:	
RICHARD S. SHENIER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1968.	:	

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Petitioner, Richard S. Shenier, 88-10 Corona Avenue, Elmhurst, New York 11373, 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 1968 (File No. 17718).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 7, 1979 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether expenses claimed by petitioner as business expenses incurred in the development of wheel fairings and subsequently disallowed pursuant to a Federal audit can nonetheless be deductible for New York State personal income tax purposes.

FINDINGS OF FACT

1. On March 8, 1976, the Audit Division received a form, IT-115, on which petitioner, Richard S. Shenier, reported a change in taxable income due to a disallowance by the Internal Revenue Service of a business loss reported for the year 1968 in the sum of \$5,240.89. Petitioner indicated on the aforementioned

form, that he did not concede to the accuracy of the Federal change and did not remit the additional personal income tax due of \$627.95, plus interest.

2. On November 22, 1976, the Audit Division issued a Notice of Deficiency, along with an explanatory Statement of Audit Changes, which stated:

"Your New York State income tax liability has been recomputed based upon the Federal audit of your Federal income tax return by the Internal Revenue Service and the decision stipulated by the U.S. Tax Court and the information submitted on Form IT-115."

The deficiency indicated that the total amount due, as of November 22, 1976, was \$914.39, which consisted of \$627.95 additional personal income tax and \$286.44 interest.

3. Petitioner, Richard S. Shenier, is an electrical engineer, an attorney at law, a pilot and a self-styled inventor. In 1964, petitioner became interested in developing a semi-retractable wheel fairing which would permit the lower half of a wheel to be exposed for ground operation, yet in flight could completely enclose the wheel in a streamlined housing. (A "fairing" is an engineering term denoting an additional part or structure added to an aircraft to smooth the outline and thus reduce drag.)

4. Prior to and during 1968, petitioner was actively engaged in the designing, developing, experimenting, constructing and testing of the wheel fairing. Scale models were built, and a Supplemental Type Certificate was applied for with the Federal Aviation Agency which requires such certifications for any major modification of a previously certified aircraft. These activities were engaged in by petitioner as a sole proprietor.

5. Historically, petitioner has been involved in the aviation industry as a consultant, arbitrator, patent attorney and inventor. He was the inventor of one patent, and of two other patent applications assigned to various clients.

In addition, petitioner is an active partner in the law firm of "Shenier and O'Connor", a partnership involved in the aircraft industry.

6. Petitioner's business expenses claimed in the development of aircraft fairings totalled \$5,240.89 the majority of which represented operational expenses and depreciation charges relating to petitioner's Cessna aircraft. Although some modifications were made to the aircraft to facilitate the eventual use of the fairings, the aircraft was never flown with the fairings mounted on it. As no income was realized during 1968, the aforementioned expenses constituted the entire business loss.

No income was attributable to the wheel fairing project prior or subsequent to 1968, although petitioner contended that it was and still is his intent and expectation to realize a profit.

7. Recognizing that the aircraft industry is a high risk business, petitioner contended that he proceeded with caution, and that he followed the same course of action that would have been taken by any aircraft manufacturer.

8. The Internal Revenue Service disallowed the business losses claimed for the years 1968 and 1970, and as a result, petitioner, Richard S. Shenier, petitioned the United States Tax Court for a redetermination and reversal of the disallowances. Pursuant to a pre-trial compromise agreement, petitioner agreed to pay the Federal deficiency of \$2,670.00 for the year 1968, and the Internal Revenue Service agreed to drop the Federal deficiency of \$2,516.00 for the year 1970. In accordance with the aforementioned agreement, the United States Tax Court "ordered and decided" to sustain the Federal deficiency for the year 1968.

9. Petitioner does not agree with the findings of the Federal audit and maintains that the 1968 business loss is deductible regardless of the pre-trial compromise agreement between himself and the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That in accordance with 20 NYCRR 115.1,

"the New York Taxable income of a resident individual taxpayer represents his Federal adjusted gross income with the modifications stated in Part 116, less his New York standard or itemized deduction and personal exemptions...."

B. That pursuant to section 659 of the Tax Law,

"if an amount of a taxpayer's federal taxable income...is changed or corrected by the United States Internal Revenue Service..., the taxpayer...shall report such changes...and shall concede the accuracy of such determination or state wherein it is erroneous...."

C. That Federal changes to taxable income are not binding nor are they required to be accepted as correct although, where such changes are accepted as correct, the burden of proof rests with the petitioner to state wherein they are erroneous.

D. That petitioner has failed to sustain his burden of proof as defined in section 689(e) of the Tax Law to show that the audit adjustments made as the result of the Federal audit were erroneous. Accordingly, the petition of Richard S. Shenier is denied and the Notice of Deficiency issued November 22, 1976 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER