

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Seymour Orlofsky, Deceased	:	
and Blanche Orlofsky	:	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	:	
1971.	:	

State of New York  
County of Albany

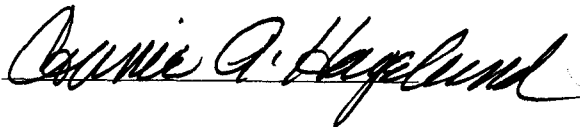
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of February, 1982, he served the within notice of Decision by certified mail upon Seymour Orlofsky, Deceased and Blanche Orlofsky the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

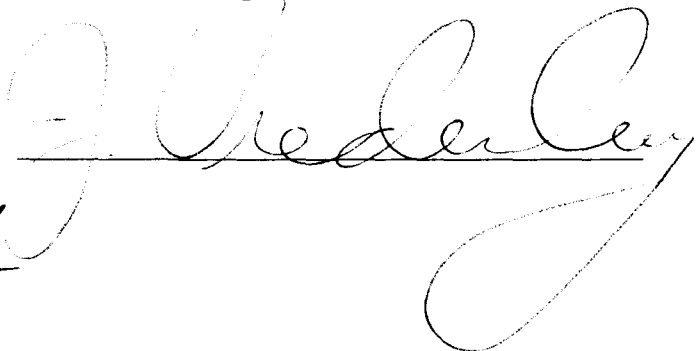
Seymour Orlofsky, Deceased  
and Blanche Orlofsky  
199 Main St.  
White Plains, NY 10601

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  
11th day of February, 1982.

  
Carmie G. Haglund

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Seymour Orlofsky, Deceased :  
and Blanche Orlofsky :

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 :  
1971.

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 11th day of February, 1982, he served the within notice of Decision by certified mail upon Lillian A. Lakin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lillian A. Lakin  
415 Ocean Pkwy., 2K  
Brooklyn, NY 11218

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  
11th day of February, 1982.

*Conrad A. Haglund*

*J. Vredenburg*

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

February 11, 1982

Seymour Orlofsky, Deceased  
and Blanche Orlofsky  
199 Main St.  
White Plains, NY 10601

Dear Mrs. Orlofsky:

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  
Lillian A. Lakin  
415 Ocean Pkwy., 2K  
Brooklyn, NY 11218  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
SEYMOUR ORLOFSKY (DECEASED) and BLANCHE ORLOFSKY  
for Redetermination of a Deficiency or for Refund  
of Personal Income Tax under Article 22 of the  
Tax Law for the Year 1971.

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DECISION

Petitioners, Seymour Orlofsky (deceased) and Blanche Orlofsky, 415 Ocean Parkway, Brooklyn, New York 11218, 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 1971 (File No. 15732).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 5, 1981 at 2:45 P.M. Petitioners appeared by Lillian A. Lakin, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

#### ISSUE

Whether petitioners claimed deductions for contributions, interest and business expenses were properly disallowed for lack of substantiation.

#### FINDINGS OF FACT

1. Petitioners, Seymour Orlofsky (deceased) and Blanche Orlofsky, filed a joint New York State Income Tax Resident Return for 1971. On said return, petitioner Seymour Orlofsky deducted business expenses of \$4,095.43. The petitioners also claimed, under itemized deductions, contributions of \$3,147.00 and interest expenses of \$5,894.00.

2. On October 28, 1974, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$1,398.97, plus interest of \$212.83, for a total of \$1,611.80. The Notice of Deficiency was issued on the basis that business expenses and interest expenses were unsubstantiated and therefore such expenses were disallowed in full; additionally a portion of the contributions was disallowed as unsubstantiated.

3. At the hearing, the respective representatives for the petitioners and Audit Division stipulated to the following adjustments:

<u>ITEM</u>	<u>AMOUNT REPORTED ON RETURN</u>	<u>CORRECTED AMOUNT</u>	<u>ADJUSTMENT</u>
Contributions	\$3,147.00	\$2,813.00	\$ 334.00
Interest Expense	5,894.00	1,023.78	4,870.22

The additional allowance to contributions and interest expense was based upon submission of cancelled checks to the Audit Division's representative which were not previously submitted to nor considered by the Audit Division.

4. Petitioners failed to submit any documentary evidence in support of the claimed deduction for business expenses.

#### CONCLUSIONS OF LAW

A. That petitioners, Seymour Orlofsky (deceased) and Blanche Orlofsky, failed to show that the disallowed business expenses were ordinary and necessary [Treas. Reg. 1.162-17(d)], or that he maintained proper records in support thereof [Treas. Reg. 1.274-5]. That petitioners, Seymour Orlofsky (deceased) and Blanche Orlofsky, failed to sustain the burden of proof pursuant to the meaning and intent of section 689(e) of the Tax Law in establishing that they were entitled to any deduction for said business expense.

B. That the deduction for contributions and interest expense be increased in accordance with Finding of Fact "3".

C. That the petition of Seymour Orlofsky (Deceased) and Blanche Orlofsky is granted to the extent provided in Conclusion of Law "B". That the Audit Division is hereby directed to modify the Notice of Deficiency dated October 28, 1974, to be consistent with the Conclusions of Law determined herein, and that except as so granted, the petition is in all other respects denied. That the revised tax due shall be with such interest as may be legally due.

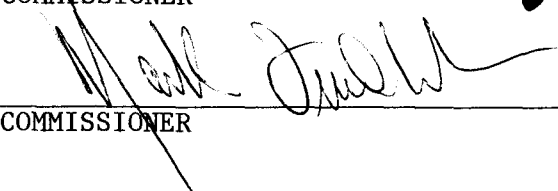
DATED: Albany, New York

FEB 11 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER