

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Keith M. Schneider

:

:

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 & 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 30th day of April, 1982, he served the within notice of Decision by certified mail upon Keith M. Schneider, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Keith M. Schneider
105 Wildwood Rd.
Great Neck, NY 11204

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
30th day of April, 1982.

James A. Chaplund

Jay J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
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Keith M. Schneider

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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 & 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 30th day of April, 1982, he served the within notice of Decision by certified mail upon Henry M. Burger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry M. Burger
Hoffberg, Oberfest & Burger
888 Seventh Ave.
New York, NY 10019

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
30th day of April, 1982.

Connie A. Haglund

Jay Vredenburg

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

April 30, 1982

Keith M. Schneider
105 Wildwood Rd.
Great Neck, NY 11204

Dear Mr. Schneider:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Henry M. Burger
Hoffberg, Oberfest & Burger
888 Seventh Ave.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
KEITH M. SCHNEIDER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973 and 1974.	:	

Petitioner, Keith M. Schneider, 105 Wildwood Road, Great Neck, New York 11204, 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 and 1974 (File No. 18640).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 1, 1980 at 1:15 P.M. Petitioner appeared by Henry M. Burger, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the modification required to be made by petitioner pursuant to section 612(b)(7) of the Tax Law for the year 1974 is the excess of 10 percent of earned income or \$2,500.00, whichever is lower or the excess of 15 percent of earned income or \$7,500.00, whichever is lower.

FINDINGS OF FACT

1. Petitioner, Keith M. Schneider, timely filed a New York State Combined Income Tax Return with his wife for each of the years 1973 and 1974.
2. On November 22, 1976, the Audit Division issued a Statement of Audit Changes to petitioner wherein adjustments were made relative to the "modifications

required to be made by a shareholder of a professional corporation in determining New York adjusted gross income pursuant to section 612(b)(7), (8) and (9) of the New York Tax Law." Such adjustments were made since said modifications were omitted for the year 1973 and purportedly incorrect for 1974. Accordingly, a Notice of Deficiency was issued against petitioner on April 11, 1977 asserting additional personal income tax of \$3,355.20, plus interest of \$711.79, for a total due of \$4,066.99.

3. Petitioner conceded all adjustments except that increasing the modification reported pursuant to section 612(b)(7) of the Tax Law for the year 1974.

4. During the year 1974, petitioner, who was on a calendar year basis, was a shareholder of BSK Pediatric Surgical Ass. P.C., a professional service corporation conducting business on a fiscal year basis which began November 1, 1973.

5. For taxable years beginning after December 31, 1973, the new Federal limits on the amount deductible by a self-employed person for contributions to qualified plans were increased to the lesser of \$7,500.00 or 15 percent of earned income (previous limits were \$2,500.00 or 10 percent). For State tax purposes, a shareholder-employee in a Professional Service Corporation is required to add to his Federal adjusted gross income the excess of the amount deductible by a corporation as a contribution to certain employee plans for pensions, profit-sharing, annuity and bond purchase over what would have been deductible by a self-employed individual. Petitioner contended that since he was on a calendar year basis, he was properly entitled to report a modification for 1974 pursuant to section 612(b)(7), of the excess contributions over the new limits (\$7,500.00 or 15 percent), rather than the excess contributions over the previous limits (\$2,500.00 or 10 percent).

CONCLUSIONS OF LAW

A. That a modification increasing Federal adjusted gross income is required to be made pursuant to section 612(b)(7) of the Tax Law as follows:

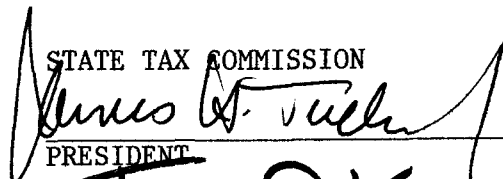
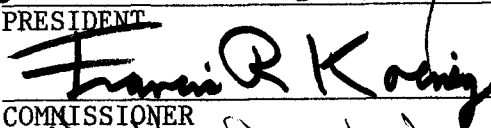
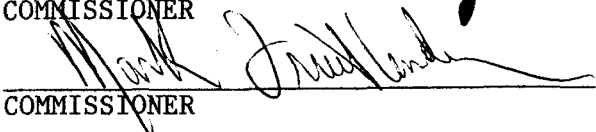
"In the case of a taxpayer who is a shareholder of a corporation organized under article fifteen of the business corporation law, the amount which is deductible by such corporation under paragraphs one, two or three of subdivision (a) of section four hundred four of the internal revenue code for its taxable year ending in or with such taxpayer's taxable year for contributions paid on behalf of such taxpayer minus the maximum amount which would be deductible for federal income tax purposes by such taxpayer under section sixty-two (7) of the internal revenue code or any amendment thereto, if such taxpayer were a self-employed individual."

B. That Internal Revenue Service Technical Information Release No. 1334 ¶H-3 clearly indicates that the new contribution limits (\$7,500.00 or 15 percent) are applicable where a partnership's taxable year began after December 31, 1973 without regard to the taxable year of the individual. That if petitioner were self-employed, he could assume a fiscal year like the professional service corporation in which he was a shareholder. Accordingly, petitioner is required for the year 1974 to increase his Federal adjusted gross income by the professional service corporation's contributions which were in excess of \$2,500.00 or 10 percent of earned income, whichever is lower.

C. That the petition of Keith M. Schneider is denied and the Notice of Deficiency dated April 11, 1977 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

APR 30 1982

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER