

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Helen M. Schmutz : 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 :
1973.

State of New York
County of Albany

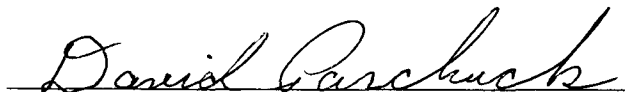
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of May, 1983, he served the within notice of Decision by certified mail upon Estate of Helen M. Schmutz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

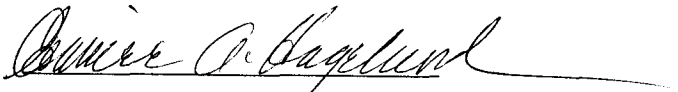
Estate of Helen M. Schmutz
Frederick Doppelt, Executor
292 Madison Ave.
New York, NY 10017

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
31st day of May, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 31, 1983

Estate of Helen M. Schmutz
Frederick Doppelt, Executor
292 Madison Ave.
New York, NY 10017

To the Executors:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

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	:	
	:	
THE ESTATE OF HELEN M. SCHMUTZ	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioner, The Estate of Helen M. Schmutz, Frederick Doppelt, Executor, 292 Madison Avenue, New York, New York 10017, 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 1973 (File No. 19181).

On December 1, 1980, petitioner advised the State Tax Commission, in writing, that it desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether taxpayers filing separately on form IT-208, must combine their adjusted gross income, items of tax preference and specific deductions, when computing the modification for allocable expenses.

FINDINGS OF FACT

1. Helen M. Schmutz (hereinafter decedent), timely filed a New York State Combined Income Tax Return with her husband for the year 1973. Since each had items of tax preference in excess of their specific deductions, they filed separate minimum income tax computation schedules, forms IT-220. In arriving at the modification for allocable expenses, decedent, who claimed full benefit of the joint itemized deductions, computed such modification using her separate adjusted gross income, items of tax preference and specific deduction.

2. On June 23, 1976 the Audit Division issued a Statement of Audit Changes to petitioner wherein it held that "when computing the modification to itemized deductions on Schedule IT-220, adjusted gross income, items of tax preference and specific deduction for both taxpayers should be combined." Accordingly, a Notice of Deficiency was issued on April 11, 1977 asserting additional personal income tax of \$119.29, plus interest of \$26.74, for a total due of \$146.03.

3. Petitioner contended that the deficiency resulted from the modification for allocable expenses based on preference income of the husband. Further, it maintained that "there is nothing in the tax law that requires or permits the husband's tax preference items to be charged to the wife for the purpose of modifying deductions where a form 208 is filed."

4. The instructions printed on form IT-220, with respect to computation of the modification for allocable expenses, specifically state that where both husband and wife have items of tax preference in excess of their specific deductions, they must combined their total items of tax preference, adjusted gross incomes and specific deductions for the purpose of computing said modification.

CONCLUSIONS OF LAW

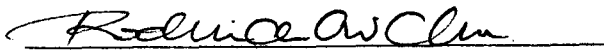
A. That the requirements as set forth in the instructions for form IT-220, with respect to computing the modification for allocable expenses, are the standard practice of the State Tax Commission and are deemed to have received legislative sanction. (In the Matter of Cohen v. Murphy, 26 A.D.2d 718).

B. That the petition of the Estate of Helen M. Schmutz 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

STATE TAX COMMISSION

MAY 31 1983


PRESIDENT


COMMISSIONER


COMMISSIONER