

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard C. Schneller :
and Sandra J. Schneller : AFFIDAVIT OF MAILING :
:
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law for the :
Years 1976 & 1977. :

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Richard C. Schneller and Sandra J. Schneller, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard C. Schneller
and Sandra J. Schneller
735 Lake Rd.
Ontario, NY 14519

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 May, 1983.

David Parchuck

James P. Higdon
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Richard C. Schneller
and Sandra J. Schneller
735 Lake Rd.
Ontario, NY 14519

Dear Mr. & Mrs. Schneller:

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 & 722 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	:	
RICHARD C. SCHNELLER and SANDRA J. SCHNELLER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of the	:	
Tax Law for the Years 1976 and 1977.	:	

Petitioners, Richard C. Schneller and Sandra J. Schneller, 735 Lake Road, Ontario, New York 14519, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1976 and 1977 (File No. 28606).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 17, 1982 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed \$1,500.00 of the business mileage expense deduction claimed for each of the years 1976 and 1977.

II. Whether the Audit Division properly disallowed a home office expense deduction of \$360.00 for the year 1976.

III. Whether delays in auditing petitioners' returns and providing for an administrative hearing prevents the Audit Division from collecting interest on any tax which may be found due as the result of this decision.

FINDINGS OF FACT

1. Petitioners herein, Richard C. Schneller and Sandra J. Schneller, filed New York State personal income and unincorporated business tax returns for the years 1976 and 1977. For each of the years in question, petitioners claimed a deduction of \$3,750.00 (using the standard mileage rate) for the use of an automobile in their printing business. For the year 1976, petitioners' also claimed a deduction of \$360.00 for the expenses incurred in the maintenance of an office in their home.

2. On July 18, 1979, the Audit Division issued a Notice of Deficiency to petitioners for the years 1976 and 1977, asserting that additional personal income and unincorporated business tax was due in the amount of \$577.69, together with penalty and interest of \$187.99, for a total due of \$765.68.

3. The aforementioned Notice of Deficiency was based on a field audit of petitioners' personal and business books and records. Said audit resulted in the disallowance of the home office expense deduction of \$360.00 claimed for the year 1976. Also disallowed was \$1,500.00 of the business mileage expense deduction claimed in each of the years 1976 and 1977. The home office expense deduction was disallowed as a matter of law [Internal Revenue Code section 280A(a)], while the business mileage expense deduction was partially disallowed due to petitioners' failure to maintain records detailing the number of business miles actually driven. Other adjustments were made which petitioners do not contest or were made solely due to a change in adjusted gross income and, accordingly, these adjustments will not be addressed hereinafter.

4. Petitioners computed the business mileage expense deduction for both 1976 and 1977 using the standard mileage rate of 15 cents a mile for the first 15,000 miles and 10 cents a mile for every mile thereafter. Petitioners

estimated that they drove a total of 30,000 business miles in both 1976 and 1977. The Audit Division allowed petitioners a total of 15,000 business miles for each of the years 1976 and 1977. No documentary or other credible evidence was adduced at the hearing to substantiate the number of business miles driven during the years 1976 and 1977.

5. Petitioners argue that section 280A of the Internal Revenue Code was amended in 1982 to allow the home office expense deduction in certain instances and that said amendment was retroactive to the years 1979, 1980 and 1981. Petitioners further allege that for equity reasons they should be allowed the home office expense deduction for the year 1976. No evidence or testimony was adduced at the hearing to show that petitioners' use of the office in home qualified for exception from the general disallowance of said expense under section 280A(c) of the Internal Revenue Code.

6. Petitioners assert that if any tax is found to be due, that no interest should be charged on said tax, since there was a delay in auditing their returns and also a delay in providing for an administrative hearing.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain the burden of proof under sections 722 and 689(e) of the Tax Law to show that they are entitled to business mileage expense deductions for 1976 and 1977 in amounts greater than those allowed by the Audit Division.

B. That section 280A of the Internal Revenue Code, entitled "Disallowance of Certain Expenses in Connection with Business Use of Home, Rental of Vacation Homes, Etc.", provides in subdivision (a) that "Except as otherwise provided in this section...no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer

during the taxable year as a residence." Section 280A(c) of the Code provides for specific exceptions to this general disallowance. Petitioners have failed to sustain the burden of proof to show that their use of the office in home in 1976 came within any of the specific exceptions provided for in Internal Revenue Code section 280A(c).

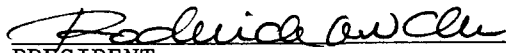
C. That there are no provisions in Article 22 or 23 of the Tax Law which would permit interest to be waived. Petitioners at all times had the option of paying the proposed tax due so as to stop the accrual of additional interest.

D. That the petition of Richard C. Schneller and Sandra J. Schneller is denied and the Notice of Deficiency dated July 18, 1979 is sustained, together with such additional penalty and interest as may be lawfully due and owing.

DATED: Albany, New York

MAY 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER