

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mortimer & Marcia Schulman :
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 :
1966. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Mortimer Schulman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marcia Schulman
385 McLean Ave.
Yonkers, NY 10705

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
8th day of July, 1983.

Connie Hagelund

Kathy Pflaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 8, 1983

Marcia Schulman
385 McLean Ave.
Yonkers, NY 10705

Dear Mrs. Schulman:

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 :
Mortimer & Marcia Schulman :
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 :
1966. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Mortimer Schulman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mortimer Schulman
165 W. 91st St., Apt. 14H
New York, NY 10024

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
8th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 8, 1983

Mortimer Schulman
165 W. 91st St., Apt. 14H
New York, NY 10024

Dear Mr. Schulman:

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 Petitions
of
MORTIMER SCHULMAN and MARCIA SCHULMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1966.

:
:
:
:
:
:
:

DECISION

Petitioners, Mortimer Schulman, 165 West 91st Street, Apt. 14H, New York, New York 10024 and Marcia Schulman, 385 McLean Avenue, Yonkers, New York 10705, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1966 (File No. 29393).

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 April 27, 1982 at 1:15 P.M. Petitioner Marcia Schulman appeared pro se solely on her own behalf. The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUES

I. Whether the deficiency, which resulted from a Federal change, is properly due and owing.

II. Whether petitioner Marcia Schulman should be relieved of liability for the deficiency as an "innocent spouse".

FINDINGS OF FACT

1. On February 17, 1978 the Audit Division issued a Statement of Audit Changes to petitioners for the years 1963 through 1966 wherein their New York State income tax liability "has been recomputed based upon final Federal audit --- and the decision stipulated by the U.S. Tax Court". Additionally, said

Statement indicated that "The liability of Marcia Schulman is limited to the additional tax due for the tax year 1966 only. She is not liable for the penalty for that year.". Since petitioners' joint New York State personal income tax return filed for the year 1966 had previously been destroyed, their tax liability was recomputed using information abstracted from a microfilm record of such return. Accordingly, a Notice of Deficiency was issued against petitioners for the year 1966 asserting additional personal income tax of \$900.55, penalty of \$450.27, plus interest of \$603.71, for a total due of \$1,954.53. Said penalty was issued pursuant to section 685(e) of the Tax Law for fraud.

2. Petitioner Marcia Schulman appeared at the hearing and sought relief from the liability herein on the basis that she was an "innocent spouse". Pursuant to the perfected petition filed by petitioner Mortimer Schulman, he claims to be entitled to additional uncredited expense deductions. Since he did not appear, have representation at the hearing, or have evidence submitted on his behalf, the record is void of information relative to his claim.

3. Petitioners were married on December 17, 1965. Currently they are divorced. Mrs. Schulman gave no specific date of the divorce, but testified that it was "about a year and a half ago". She claimed that she had no knowledge of her husband's business activities or how much money he made. In an affidavit sworn to on March 31, 1981, she stated that:

(a) She did not know or have any reason to know that Mr. Schulman had omitted any sums of money from his income during the year 1966.

(b) She in no way participated, helped or had any knowledge of his business ventures.

(c) She has not significantly benefited, directly or indirectly, from his omissions of income for 1966.

4. Pursuant to petitioners' joint 1966 U.S. Individual Income Tax Return, their total income was comprised of Mr. Schulman's net income from his law practice of \$9,049.50, plus interest income of \$492.33.

5. The final Federal adjustment for 1966 was comprised largely of an adjustment for "unreported Schedule C income" of \$10,334.20. A fraud penalty was also imposed for Federal purposes.

CONCLUSIONS OF LAW

A. That pursuant to section 651(b)(2)(A) of the Tax Law, where a husband and wife file a joint New York State income tax return, their tax liabilities shall be joint and several except as provided in paragraph (5) of this subsection (b).

B. That section 651(b)(5)(i) of the Tax Law provides that:

"Under regulations prescribed by the tax commission, if

(A) a joint return has been made pursuant to paragraph (2)(A) or paragraph (3) of this subsection for a taxable year and on such return there was omitted from New York adjusted gross income an amount properly included therein which is attributable to one spouse and which is in excess of twenty-five percent of the amount of New York adjusted gross income stated in the return,

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission and

(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from New York adjusted gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission, then the other spouse shall be relieved of liability for tax (including interest, penalties and other amounts) for such taxable year to the extent that such liability is attributable to such omission from New York adjusted gross income."

C. That petitioner Marcia Schulman has failed to sustain her burden of proof required pursuant to section 689(e) of the Tax Law to establish that she did not know of and had no reason to know of the omission of income by Mr. Schulman or that she had not significantly benefited, directly or indirectly, by such omission. Accordingly, relief under section 651(b)(5)(i) is deemed unwarranted. That the tax plus interest is due for tax year 1966 from petitioner Marcia Schulman.


D. That since petitioner Mortimer Schulman was not present or represented at the hearing, and consequently no defense was presented on his behalf, the deficiency with respect to his liability is sustained.

E. That the petitions of Mortimer Schulman and Marcia Schulman are denied and the Notice of Deficiency dated June 19, 1978 is sustained, together with such additional penalty and interest as may be lawfully owing.

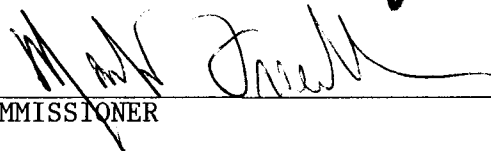
DATED: Albany, New York

STATE TAX COMMISSION

JUL 08 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

CLAIM CHECK
NO.

944770

☐ HOLD

DATE

7/12
1ST NOT

2ND

RETURN

7-27

Detached from
PS Form 3848-A
Oct 1980

Mortimer Schulman
163 W. 91st St., Apt. 14H
New York, NY 10024

P 481 208 009

MAIL

JUL 12 1983

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

July 8, 1983

Mortimer Schulman
165 W. 91st St., Apt. 14H
New York, NY 10024

Dear Mr. Schulman:

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 Petitions	:	
of	:	
MORTIMER SCHULMAN and MARCIA SCHULMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1966.	:	

Petitioners, Mortimer Schulman, 165 West 91st Street, Apt. 14H, New York, New York 10024 and Marcia Schulman, 385 McLean Avenue, Yonkers, New York 10705, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1966 (File No. 29393).

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 April 27, 1982 at 1:15 P.M. Petitioner Marcia Schulman appeared pro se solely on her own behalf. The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUES

I. Whether the deficiency, which resulted from a Federal change, is properly due and owing.

II. Whether petitioner Marcia Schulman should be relieved of liability for the deficiency as an "innocent spouse".

FINDINGS OF FACT

1. On February 17, 1978 the Audit Division issued a Statement of Audit Changes to petitioners for the years 1963 through 1966 wherein their New York State income tax liability "has been recomputed based upon final Federal audit --- and the decision stipulated by the U.S. Tax Court". Additionally, said

Statement indicated that "The liability of Marcia Schulman is limited to the additional tax due for the tax year 1966 only. She is not liable for the penalty for that year.". Since petitioners' joint New York State personal income tax return filed for the year 1966 had previously been destroyed, their tax liability was recomputed using information abstracted from a microfilm record of such return. Accordingly, a Notice of Deficiency was issued against petitioners for the year 1966 asserting additional personal income tax of \$900.55, penalty of \$450.27, plus interest of \$603.71, for a total due of \$1,954.53. Said penalty was issued pursuant to section 685(e) of the Tax Law for fraud.

2. Petitioner Marcia Schulman appeared at the hearing and sought relief from the liability herein on the basis that she was an "innocent spouse". Pursuant to the perfected petition filed by petitioner Mortimer Schulman, he claims to be entitled to additional uncredited expense deductions. Since he did not appear, have representation at the hearing, or have evidence submitted on his behalf, the record is void of information relative to his claim.

3. Petitioners were married on December 17, 1965. Currently they are divorced. Mrs. Schulman gave no specific date of the divorce, but testified that it was "about a year and a half ago". She claimed that she had no knowledge of her husband's business activities or how much money he made. In an affidavit sworn to on March 31, 1981, she stated that:

(a) She did not know or have any reason to know that Mr. Schulman had omitted any sums of money from his income during the year 1966.

(b) She in no way participated, helped or had any knowledge of his business ventures.

(c) She has not significantly benefited, directly or indirectly, from his omissions of income for 1966.

4. Pursuant to petitioners' joint 1966 U.S. Individual Income Tax Return, their total income was comprised of Mr. Schulman's net income from his law practice of \$9,049.50, plus interest income of \$492.33.

5. The final Federal adjustment for 1966 was comprised largely of an adjustment for "unreported Schedule C income" of \$10,334.20. A fraud penalty was also imposed for Federal purposes.

CONCLUSIONS OF LAW

A. That pursuant to section 651(b)(2)(A) of the Tax Law, where a husband and wife file a joint New York State income tax return, their tax liabilities shall be joint and several except as provided in paragraph (5) of this subsection (b).

B. That section 651(b)(5)(i) of the Tax Law provides that:

"Under regulations prescribed by the tax commission, if

(A) a joint return has been made pursuant to paragraph (2)(A) or paragraph (3) of this subsection for a taxable year and on such return there was omitted from New York adjusted gross income an amount properly included therein which is attributable to one spouse and which is in excess of twenty-five percent of the amount of New York adjusted gross income stated in the return,

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission and

(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from New York adjusted gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission, then the other spouse shall be relieved of liability for tax (including interest, penalties and other amounts) for such taxable year to the extent that such liability is attributable to such omission from New York adjusted gross income."

C. That petitioner Marcia Schulman has failed to sustain her burden of proof required pursuant to section 689(e) of the Tax Law to establish that she did not know of and had no reason to know of the omission of income by Mr. Schulman or that she had not significantly benefited, directly or indirectly, by such omission. Accordingly, relief under section 651(b)(5)(i) is deemed unwarranted. That the tax plus interest is due for tax year 1966 from petitioner Marcia Schulman.

D. That since petitioner Mortimer Schulman was not present or represented at the hearing, and consequently no defense was presented on his behalf, the deficiency with respect to his liability is sustained.

E. That the petitions of Mortimer Schulman and Marcia Schulman are denied and the Notice of Deficiency dated June 19, 1978 is sustained, together with such additional penalty and interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 08 1983


PRESIDENT


COMMISSIONER


COMMISSIONER