

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Peter & Deborah Shukat :
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 :
1975. :
_____ :

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 April, 1983, he served the within notice of Decision by certified mail upon Peter Shukat, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter Shukat
120 Andover Rd.
Rockville Centre, NY 11570

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 April, 1983.

David Parchuck

James A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Peter & Deborah Shukat	: : : : : :	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 1975.		

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 April, 1983, he served the within notice of Decision by certified mail upon Deborah Shukat, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Deborah Shukat
3452 Carey Lane
Baldwin Harbor, NY 11518

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 April, 1983.

David Parchuck

Annunzio A. Vegetum

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Peter & Deborah Shukat :
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 :
1975. :

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 April, 1983, he served the within notice of Decision by certified mail upon Michael Dinkes the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Dinkes
Israeloff, Trattner & Co., P.C.
11 Sunrise Plaza
Valley Stream, NY 11581

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
27th day of April, 1983.

David Parchuck

James P. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

April 27, 1983

Deborah Shukat
3452 Carey Lane
Baldwin Harbor, NY 11518

Dear Mrs. Shukat:

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
Michael Dinkes
Israeloff, Trattner & Co., P.C.
11 Sunrise Plaza
Valley Stream, NY 11581
Taxing Bureau's Representative

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

April 27, 1983

Peter Shukat
120 Andover Rd.
Rockville Centre, NY 11570

Dear Mr. Shukat:

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
Michael Dinkes
Israeloff, Trattner & Co., P.C.
11 Sunrise Plaza
Valley Stream, NY 11581
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER SHUKAT AND DEBORAH SHUKAT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioners, Peter Shukat and Deborah Shukat, 120 Andover Road, Rockville Centre, New York 11570, 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 1975 (File No. 27476).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1982 at 1:15 P.M. Petitioners appeared by Michael Dinkes, C.P.A., of the accounting firm of Israeloff, Trattner & Co., P.C. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division properly increased petitioner's reported New York income for 1975 by \$1,377.60, said amount allegedly representing petitioner Peter Shukat's distributive share of the New York City unincorporated business tax deduction taken on the partnership return of Marshall, Morris, Powell and Silfen.

FINDINGS OF FACT

1. Petitioners herein, Peter Shukat and Deborah Shukat¹, timely filed a New York State Income Tax Resident Return for the year 1975 on April 11, 1976. On said return petitioner did not report any plus or minus modifications to New York income pursuant to sections 612(b) or (c) of the Tax Law and, therefore, total New York income was identical to reported Federal adjusted gross income of \$36,480.00.

2. On April 13, 1979, the Audit Division issued a Notice of Deficiency to petitioners for the year 1975, imposing additional personal income tax of \$211.81, plus interest of \$53.86, for a total of \$265.67. The Notice of Deficiency was premised on a Statement of Audit Changes, also dated April 13, 1979, wherein the deficiency was explained in the following manner:

"New York City unincorporated business taxes are not deductible in determining personal income tax. On your personal income tax return, you failed to increase your income by the distributive share of New York City unincorporated business tax deductions taken on the partnership return(s) of Marshall, Morris, Powell and Silfen."

3. During the year at issue petitioner was one of five partners of the New York City law firm of Marshall, Morris, Powell and Silfen (hereinafter "Marshall"). The 1975 New York State partnership return filed by Marshall reported ordinary income of \$546,620.76. In computing its ordinary income Marshall claimed a deduction of \$21,525.86 for unincorporated business taxes paid to the City of New York. Schedule P on page 3 of the partnership return, wherein each partner's respective share of the New York City unincorporated business tax deduction is to be reported, was left blank. The Audit Division

¹ Deborah Shukat is involved in this proceeding due solely to the filing of a joint income tax return with her husband. Accordingly, the use of the term petitioner hereinafter shall refer solely to Peter Shukat.

attributed to each partner of Marshall a portion of the New York City unincorporated business tax deduction based on a percentage determined by placing the partner's distributive share of ordinary income over total partnership ordinary income multiplied by \$21,525.86.

4. Prior to the year at issue petitioner was an employee of Marshall. Effective January 1, 1975, petitioner became a member partner of Marshall pursuant to a verbal partnership agreement. In accordance with the terms of said verbal agreement, petitioner received compensation from Marshall in the form of a guaranteed salary of \$35,000.00 per annum. Petitioner was entitled to receive the guaranteed salary even if Marshall incurred a loss or did not generate ordinary income in an amount sufficient to cover said \$35,000.00 guaranteed salary.

5. The aforementioned guaranteed salary was the only income received by petitioner from Marshall. He did not participate in Marshall's profits or losses on a percentage of interest basis.

6. Petitioner held himself out to the general public as being a partner of Marshall and had the authority to bind the partnership regarding business matters. Petitioner was fully active in the management of the partnership and considered himself a partner of Marshall.

7. Petitioner's Federal and New York State income tax returns for the year 1975 reported the guaranteed salary received from Marshall as a distributive share of partnership income. The 1975 New York State partnership return filed by Marshall did not have an entry on line 14, page 1 "Payments to partners-salaries and interest".

8. Petitioner argues that he did not share in Marshall's profits or losses on a percentage of interest basis and that he would have received his

\$35,000.00 guaranteed salary regardless of how much ordinary income Marshall generated or how much New York City unincorporated business taxes the partnership paid. For these reasons petitioner asserts that no New York City unincorporated business taxes were deducted in determining the income he received from Marshall and, therefore, no New York City unincorporated business taxes were deducted in determining his Federal adjusted gross income.

CONCLUSIONS OF LAW

A. That the New York adjusted gross income of a resident individual is his Federal adjusted gross income increased by, inter alia, the amount of income taxes imposed by this State or any other taxing jurisdiction, which were deducted in computing Federal adjusted gross income. Tax Law section 612(b)(3) and 20 NYCRR 116.2(c).

B. That section 617(a) of the Tax Law provides in pertinent part that:

"In determining New York adjusted gross income and New York taxable income of a resident partner, any modifications described in subsections (b), (c) or (d) of section six hundred twelve,...which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates."

C. That section 617(b) of the Tax Law provides that:

"Each item of partnership income, gain, loss or deduction shall have the same character for a partner under this article as for federal income tax purposes."

D. That Treasury Regulation section 1.707-1(c) provides in part that guaranteed payments are considered as made to one who is not a member of the partnership, only for the purposes of section 61(a) (relating to gross income) and section 162(a) (relating to trade or business expenses) and further provides that for the purposes of other provisions of the internal revenue laws, guaranteed payments are regarded as a partner's distributive share of ordinary income (emphasis added).

E. That petitioner's guaranteed salary is properly considered a distributive share of partnership ordinary income. That petitioner, in the computation of 1975 New York income, must increase his Federal adjusted gross income by \$1,377.60, said sum representing his share of the New York City unincorporated business tax deduction taken on Marshall's partnership return for the year 1975. Tax Law sections 617(a), 612(b)(3) and 20 NYCRR 119.3(a) and 116.2(c).

That Schedule P on page 3 of Marshall's 1975 New York State partnership return wherein the partnership is to report each partners' respective share of the New York City unincorporated business tax deduction was left blank. Additionally, Marshall's partnership return did not report the payment of any salaries to partners on line 14, page 1. That the record contains no evidence to substantiate that Marshall intended to allocate the New York City unincorporated business tax deduction to its partners on any basis other than that utilized by the Audit Division [Tax Law section 689(e)]. That no evidence was adduced at the hearing to show that the partners of Marshall, exclusive of petitioner, reported on their respective New York State income tax returns modifications increasing their Federal adjusted gross income. Moreover, no evidence was submitted to show that the total of said modifications, if any were in fact made, equal the entire New York City unincorporated business tax deduction claimed on Marshall's partnership return. Finally, it should be noted that Marshall is required to pay New York City unincorporated business tax on the salary paid to petitioner [Administrative Code of the City of New York, Chapter 46, Title S, S46-6.0(b)(3)].

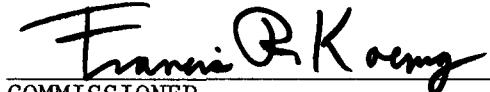
F. That the petition of Peter Shukat and Deborah Shukat is denied and the Notice of Deficiency dated April 13, 1979 is sustained, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

APR 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER