

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LEONARD AND ARLENE KLESTZICK

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1967

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman , 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 16th day of December , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Leonard and
Arlene Klestzick

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Leonard and Arlene Klestzick
614 Beach 8th Street
Far Rockaway, New York 11691

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

16th day of December , 19 71

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

LEONARD AND ARLENE KLESTZICK : DECISION

for a Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year 1967. :

Leonard and Arlene Klestzick filed a petition pursuant to section 689 of the Tax Law for a redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1967. In lieu of a hearing the petitioner requested a decision based on the file of the Income Tax Bureau. Such file has been duly examined and considered.

ISSUE

The issue in this case is the disallowance of a deduction taken on petitioner's return for the use of a part of his residence in the employment of petitioner, Leonard Klestzick, as an assistant principal of a public school.

FINDINGS OF FACT

1. Leonard Klestzick is an assistant principal of a public "special service" school located in the Brownsville area of Brooklyn, New York. In addition, he is employed as an instructor in Bible, Hebrew history and Hebrew philosophy at a Hebrew high school on Long Island. The principal of the public school states that Mr. Klestzick must do some report writing outside of regular school hours.

2. Petitioner, Leonard Klestzick, deducted \$343.00 from income as representing 20% of the costs of maintaining his house. The total costs of the house were: gas, \$350.00; electricity, \$150.00; insurance, \$125.00; repairs, \$200.00; supplies, \$50.00; and depreciation, \$840.00, for a total of \$1,715.00. The house is located in Far Rockaway, Queens, and had cost petitioners \$21,000.00. Mr. Klestzick is married and had his wife and children living with him.

3. From the record it is clear that the 20% ratio used by petitioner in calculating his office-at-home expense was based entirely on space and did not take into account the amount of time the space was so used. In view of Mr. Klestzick's family responsibilities and his second job, an allowance for two hours a day would be ample.

4. The deficiency in issue amounts to \$97.06 plus interest of \$16.17 to the date of the deficiency notice on January 25, 1971, for a total of \$113.23.

CONCLUSIONS OF LAW

An employee may deduct from income the expenses incurred for the use of part of his home in his business as an employee if such use is appropriate and helpful in his employment (Newi v Com'r. 1969 U.S. Tax Court memo dec. No. 31; 432 Fed. 2d 998, 2nd Circuit, 1970; Preiss 40 U.S. Tax Court 78). However, where it cannot be shown that the use of such space was exclusively for business purposes, an allocation of such space must be made on the basis of the amount of time it was so used. (Henderson 1968 U.S. Tax Court memo dec. No. 22; Thomas 1969 U.S. Tax Court memo dec. No. 108.) To allow for such

time allocation only 8 1/3% (2/24) of the amount deducted on the return can be allowed.

DECISION

The petition is granted and the deficiency is redetermined to be \$88.48 with interest to the date of deficiency of \$14.74 for a total of \$103.22 with such further interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
December 16, 1971.

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Hawley

COMMISSIONER

Wilton Kerner

COMMISSIONER