

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1962

No. 80

MARK E. SCHLUDE, ET AL., PETITIONERS,

vs.

COMMISSIONER OF INTERNAL REVENUE

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

**PETITION FOR CERTIORARI FILED MARCH 15, 1963
CERTIORARI GRANTED MAY 20, 1963**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

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MARK E. SCHLUDE, ET AL., PETITIONERS,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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IN THE TAX COURT OF THE UNITED STATES

General Docket

Mark E. Schlude, 459 Beverly Drive, Omaha, Nebraska,
Petitioner,

Docket No. 69,591 vs.

Commissioner of Internal Revenue, Respondent.

Appearances for Petitioner:

Name: Robert Ash, Esq.,

Address: 1921 Eye Street, N. W.,
Washington 6, D. C.

Carl F. Bauersfeld, Esq., Einar Viren, Esq.

Docket Entries in Docket No. 69,591

Date	Month	Day	Year	Filings and Proceedings
Aug. 29, 1957	Aug.	29,	1957	Petition filed: Fee Paid 8/29/57.
Aug. 29, 1957	Aug.	29,	1957	Request by petr. for trial at Omaha, Nebraska. Granted Sept. 11, 1957.
Oct. 4, 1957	Oct.	4,	1957	Answer by resp. filed.
Dec. 24, 1957	Dec.	24,	1957	Notice of trial 3-24-58 at Omaha Neb.
Mar. 4, 1958	Mar.	4,	1958	Motion by petr. to consolidate Dkt. Nos. 62109, 69591, 69593. Granted 3-24-58.
Mar. 6, 1958	Mar.	6,	1958	Notice of hgr. 3-24-58, Omaha, Nebr., on petr. motion.
Mar. 24, 1958	Mar.	24,	1958	Trial before J. Black at Omaha, Nebraska, Joint Oral motion to consolidate. Granted (62109, 69591, 2, 3). Stipulation of Facts filed at trial. Appearance of Carl F. Bauersfeld and Einar Viren, Esq., filed. Briefs due June 23, 1958. Reply Briefs due July 23, 1958. Submitted to J. Black.

[fol. 2]

Month	Day	Year	Filings and Proceedings
Under Submission.			
Apr.	8,	1958	Supplemental Stipulation of Facts.
Apr.	17,	1958	Transcript of Proceedings 3-24-58 filed.
June	20,	1958	Motion by resp. for extension of time to July 7, 1958, to file brief. Granted 6-23-58.
June	23,	1958	Motion by petr. for extension of time to July 23, 1958, to file brief. Granted 6/23/58.
July	23,	1958	Brief for Petr. filed.
July	24,	1958	Motion by resp. for extension of time to Aug. 7, 1958, to file brief. Granted 7-25-58.
Aug.	5,	1958	Brief for Resp. filed.
Sept.	3,	1958	Motion by petr. for extension of time to Oct. 6, 1958, to file reply brief. Granted 9-4-58.
Sept.	3,	1958	Joint Motion to correct the transcript. Granted 9-5-58.
Sept.	4,	1958	Reply Brief filed by Resp.
Oct.	3,	1958	Reply Brief filed by Petr.
June	18,	1959	Motion by petr. for leave to call the Court's attention to certain cases. Granted 6-19-59.
Sept.	28,	1959	Findings of Fact and Opinion filed Judge Black. Decision will be entered under R. 50.
Nov.	19,	1959	Motion by resp. for revision of order "No obj. by petr." Granted 11-23-59.
Nov.	23,	1959	Order, that resp. motion is Granted and the Findings of Fact and Opinion of Sept. 28, 1959 is revised.
Nov.	23,	1959	Decision entered, Judge Black.
Appellate Proceedings.			
Feb.	3,	1960	Petition for Review by U. S. Ct. of Ap. for 8th Cir. filed by petr.
Feb.	3,	1960	Proof of Service of pet. for rev. filed.
Feb.	11,	1960	Agreed Designation of Contents of Record on Rev. filed.

[fol. 3]

IN THE TAX COURT OF THE UNITED STATES
General Docket

Marzalie Schlude, 459 Beverly Drive, Omaha, Nebraska,
Petitioner,

Docket No. 69,592 vs.

Commissioner of Internal Revenue, Respondent.

Appearances for Petitioner:

Name: Robert Ash, Esq.,

Address: 1921 Eye Street, N.W.,
Washington 6, D. C.

Carl F. Bauersfeld, Esq., Einar Viren, Esq.

Docket Entries in Docket No. 69,592

Month	Day	Year	Filings and Proceedings
Aug.	29,	1957	Petition filed. Fee Paid 8/29/57.
Aug.	29,	1957	Request by petr. for trial at Omaha, Nebraska. Granted Sept. 11, 1957.
Oct.	4,	1957	Answer by resp. filed.
Dec.	24,	1957	Notice of trial 3-24-58 at Omaha, Neb.
Mar.	4,	1958	Motion by petr. to consolidate Dkt. Nos. 62109, 69,591-69,593. Granted 3-24-58.
Mar.	6,	1958	Notice of hgr. 3-24-58, Omaha, Nebr., on petr. motion.
Mar.	24,	1958	Trial before J. Black at Omaha, Neb. Joint oral motion to consolidate Granted (62109, 69,592, 2, 3). Stipulation of Facts filed at trial. Appearance of Carl F. Bauersfeld and Einar Viren, Esq., filed. Briefs due June 23, 1958. Reply Briefs due July 23, 1958. Submitted to J. Black.

[fol. 3]

IN THE TAX COURT OF THE UNITED STATES
General Docket

Marzalie Schlude, 459 Beverly Drive, Omaha, Nebraska,
Petitioner,

Docket No. 69,592 vs.

Commissioner of Internal Revenue, Respondent.

Appearances for Petitioner:

Name: Robert Ash, Esq.,

Address: 1921 Eye Street, N. W.,
Washington D. C.

Carl F. Bauersfeld, Esq., Einar Viren, Esq.

Docket Entries in Docket No. 69,592

Date	Month	Day	Year	Filings and Proceedings
Aug. 29, 1957	Aug.	29,	1957	Petition filed. Fee Paid 8/29/57.
Aug. 29, 1957	Aug.	29,	1957	Request by petr. for trial at Omaha, Nebraska. Granted Sept. 11, 1957.
Oct. 4, 1957	Oct.	4,	1957	Answer by resp. filed.
Dec. 24, 1957	Dec.	24,	1957	Notice of trial 3-24-58 at Omaha, Neb.
Mar. 4, 1958	Mar.	4,	1958	Motion by petr. to consolidate Dkt. Nos. 62109, 69591-69593. Granted 3-24-58.
Mar. 6, 1958	Mar.	6,	1958	Notice of hgr. 3-24-58, Omaha, Nebr., on petr. motion.
Mar. 24, 1958	Mar.	24,	1958	Trial before J. Black at Omaha, Neb. Joint oral motion to consolidate. Granted (62109, 69592, 2, 3). Stipulation of Facts filed at trial. Appearance of Carl F. Bauersfeld and Einar Viren, Esq., filed. Briefs due June 23, 1958. Reply Briefs due July 23, 1958. Submitted to J. Black.

[fol. 4]

Date Month Day Year	Filings and Proceedings
Under Submission.	
Apr. 8, 1958	Supplemental Stipulation of Facts.
Apr. 17, 1958	Transcript of Proceedings 3-24-58 filed.
June 20, 1958	Motion by resp. for extension of time to July 7, 1958, to file brief. Granted 6-23-58.
June 23, 1958	Motion by petr. for extension of time to July 23, 1958, to file brief. Granted 6/23/58.
July 23, 1958	Brief for Petr. filed.
July 24, 1958	Motion by resp. for extension of time to Aug. 7, 1958, to file Brief. Granted 7-25-58.
Aug. 5, 1958	Brief for Resp. filed.
Sept. 3, 1958	Motion by petr. for extension of time to Oct. 6, 1958, to file reply brief. Granted 9-4-58.
Sept. 3, 1958	Joint Motion to correct the transcript. Granted 9-5-58.
Sept. 4, 1958	Reply Brief filed by Resp.
Oct. 3, 1958	Reply Brief filed by Petr.
June 18, 1959	Motion by petr. for leave to call the Court's attention to certain cases. Granted 6-19-59.
Sept. 28, 1959	Findings of Fact and Opinion filed Judge Black. Decision will be entered under R. 50.
Nov. 19, 1959	Motion by resp. for revision of order "No obj. by petr." Granted 11-23-59.
Nov. 23, 1959	Order, that resp. motion is Granted and the Findings of Fact and Opinion of Sept. 28, 1959 is revised.
Nov. 23, 1959	Decision entered, Judge Black.
Appellate Proceedings.	
Feb. 3, 1960	Petition for Review by U. S. Ct. of Ap. for 8th Cir. filed by petr.
Feb. 3, 1960	Proof of Service of pet. for rev. filed.
Feb. 11, 1960	Agreed Designation of Contents of Record on Rev. filed.

[fol. 5]

IN THE TAX COURT OF THE UNITED STATES

General Docket

Mark E. Schlude and Marzalie Schlude, Husband and Wife,
459 Beverly Drive, Omaha, Nebraska, Petitioner,

Docket No. 69,593. vs.

Commissioner of Internal Revenue, Respondent.

Appearances for Petitioner:

Name: Robert Ash, Esq.,

Address: 1921 Eye Street, N. W.,

Washington 6, D. C.

Carl F. Bauersfeld, Esq., Einar Viren, Esq.

Docket Entries in Docket No. 69,593

Date Month Day Year	Filings and Proceedings
Aug. 29, 1957	Petition filed. Fee paid 8/29/57.
Aug. 27, 1957	Request by petr. for trial at Omaha, Nebraska. Granted Sept. 11, 1957.
Oct. 4, 1957	Answer by resp. filed.
Dec. 24, 1957	Notice of trial 3-24-58 at Omaha, Neb.
Mar. 4, 1958	Motion by petr. to consolidate Dkt. Nos. 62109, 69591-69593. Granted 3-24-58.
Mar. 6, 1958	Notice of hgr. 3-24-58, Omaha, Neb. on petr. motion.
Mar. 24, 1958	Trial before J. Black at Omaha, Neb. Joint oral motion to consolidate. Granted (62109, 69591, 2, 3). Stipulation of Facts filed at trial. Appearance of Carl F. Bauersfeld and Einar Viren, Esq., filed. Briefs due June 23, 1958. Reply Briefs due July 23, 1958. Submitted to J. Black.

[fol. 6]

Date
Month Day Year

Filings and Proceedings

Under Submission.

Apr. 8, 1958 Supplemental Stipulation of Facts.
 Apr. 17, 1958 Transcript of Proceedings 3-24-58 filed.
 June 20, 1958 Motion by resp. for extension of time to July 7, 1958, to file brief. Granted 6-23-58.
 June 23, 1958 Motion by petr. for extension of time to July 23, 1958, to file brief. Granted 6/23/58.
 July 23, 1958 Brief for Petr. filed.
 July 24, 1958 Motion by resp. for extension of time to Aug. 7, 1958, to file Brief. Granted 7-25-58.
 Aug. 5, 1958 Brief for Resp. filed.
 Sept. 3, 1958 Motion by petr. for extension of time to Oct. 6, 1958, to file reply brief. Granted 9-4-58.
 Sept. 3, 1958 Joint Motion to correct the transcript. Granted 9-5-58.
 Sept. 4, 1958 Reply Brief filed by Resp.
 Oct. 3, 1958 Reply Brief filed by Petr.
 June 18, 1959 Motion by petr. for leave to call the Court's attention to certain cases. Granted 6-19-59.
 Sept. 28, 1959 Findings of Fact and Opinion filed Judge Black. Decision will be entered under R. 50.
 Nov. 19, 1959 Motion by resp. for revision of order "No obj. by petr." Granted 11-23-59.
 Nov. 23, 1959 Order, that resp. motion is Granted and the Findings of Fact and Opinion of Sept. 28, 1959 is revised.
 Nov. 23, 1959 Decision entered, Judge Black.

Appellate Proceedings.

Feb. 3, 1960 Petition for Review by U. S. Ct. of Ap. for 8th Cir. filed by petr.
 Feb. 3, 1960 Proof of Service of pet. for rev. filed.
 Feb. 11, 1960 Agreed Designation of Contents of Record on Rev. filed.

[fol. 7]

IN THE TAX COURT OF THE UNITED STATES

Docket No. 69591.

MARK E. SCHLUDE, Petitioner.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION OF MARK E. SCHLUDE IN DOCKET No. 69591—
 Filed August 29, 1957.

The above-named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (RC:OMA(OMA):Ap WEF:BCR:blmb) dated July 2, 1957, and as a basis of his proceeding alleges as follows:

I.

Petitioner is an individual whose address is 459 Beverly Drive, Omaha, Nebraska. The return for the year here involved was filed with the District Director of Internal Revenue, Omaha, Nebraska.

II.

The notice of deficiency, a copy of which is attached hereto and made a part of this petition by reference, is dated July 2, 1957.

III.

The tax in controversy is income tax for the year 1952 in the total amount of \$9,264.69.

IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

A. The Commissioner erred in increasing petitioner's "partnership income" in the amount of \$14,101.12 for the year 1952.