

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JOHN E. AND GLANITA RYAN : DETERMINATION
 : DTA NO. 817426
for Redetermination of Deficiencies or for Refund of New :
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 1995 and 1996. :

Petitioners, John E. and Glanita Ryan, 141 Brookside Drive, Smithtown, New York 11787-4457, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1995 and 1996.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York, on July 20, 2001 at 10:00 A.M. Petitioners appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Kathy Pfaffenbach).

The parties were allowed time to file briefs in this matter. The final brief was due on November 2, 2001 and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

Whether petitioners are properly entitled to a casualty loss deduction on their 1995 New York State return.

FINDINGS OF FACT

1. Petitioners, John E. and Glanita Ryan, filed a joint New York State Resident Income Tax Return for the year 1995 whereon they reported New York adjusted gross income of \$83,469.00 and New York itemized deductions totaling \$25,167.00.

2. For 1996, petitioners filed a joint New York State Resident Income Tax Return whereon they reported New York adjusted gross income of \$85,789.00 and New York itemized deductions totaling \$25,239.00.

3. On August 17, 1998, the Division of Taxation (“Division”), issued a separate Notice of Deficiency to petitioners for each of the years 1995 and 1996. For 1995, the notice asserted additional New York State personal income tax of \$1,088.36, plus penalties of \$159.35 and interest of \$209.88, less payments of \$628.00, for a total due of \$829.59. For 1996, the notice asserted additional New York State personal income tax of \$917.28, plus penalties of \$92.78 and interest of \$93.84, less payments of \$592.00, for a total due of \$511.90. The penalties asserted each year were for negligence pursuant to Tax Law § 685(b)(1) and (2). The deficiencies for both years at issue were the result of the Division’s adjustments to petitioners’ claimed New York itemized deductions based on documentation submitted. These adjustments are set forth below:

1995

<u>Deduction</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
Taxes	\$11,501.00	\$6,606.00	\$4,895.00
Interest	7,849.00	7,849.00	-0-
Contributions	2,397.00	-0-	2,397.00
Casualty loss	4,497.00	-0-	4,497.00
Miscellaneous deductions	<u>3,426.00</u>	<u>-0-</u>	<u>3,426.00</u>
Subtotal	\$29,670.00	\$14,455.00	<u>\$15,215.00</u>
Less: State & Local income taxes	<u>4,503.00</u>	<u>4,503.00</u>	
Total	<u>\$25,167.00</u>	<u>\$9,952.00</u>	

1996

<u>Deduction</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
Taxes	\$14,093.00	\$6,408.00	\$7,685.00
Interest	9,085.00	9,085.00	-0-
Contributions	2,185.00	-0-	2,185.00
Miscellaneous deductions	<u>4,117.00</u>	<u>-0-</u>	<u>4,117.00</u>
Subtotal	\$29,480.00	\$15,493.00	<u>\$13,987.00</u>
Less: State & Local income taxes	<u>4,241.00</u>	<u>4,241.00</u>	
Total	<u>\$25,239.00</u>	<u>\$11,252.00</u>	

For both 1995 and 1996, petitioners' itemized deductions were reduced to an amount less than the allowable standard deduction. Accordingly, the applicable standard deduction was allowed in computing their tax liabilities for each of said years.

4. Subsequently, petitioners filed a Request for Conciliation Conference for the years 1995 and 1996 with the Division's Bureau of Conciliation and Mediation Services. As the result of a conciliation conference held April 19, 1999, the conferee issued a Conciliation Order on September 17, 1999 which, after additional allowances, reduced petitioners' total 1995 and 1996 tax deficiencies to \$996.00 for 1995 and \$846.00 for 1996. The reduced tax deficiency computed for 1995 was the result of the Division's increase in allowable real estate taxes from the initial amount of \$2,103.00 to \$4,170.00. The reduced tax deficiency computed for 1996 was the result of the Division's increase in allowable real estate taxes from the initial amount of \$2,167.00 to \$4,271.00.

5. On November 29, 1999, petitioners filed a petition for a hearing with the Division of Tax Appeals for the two years at issue wherein it was stated that they disagreed with the reduced deficiencies computed in the Conciliation Order. They claimed in the petition that they incurred itemized deductions for contributions, miscellaneous deductions and a casualty loss for which they were not given credit.

6. On June 7, 2001, the Division issued a Consolidated Statement of Tax Liabilities wherein it was indicated that petitioners had made payments toward the deficiencies of \$1,328.00 for 1995 and \$1,066.00 for 1996.

7. During the hearing, petitioners' representative stipulated to all of the adjustments incorporated into computing the reduced deficiencies stated in the Conciliation Order with the exception of the adjustment disallowing the claimed 1995 casualty loss of \$4,497.00.

8. The casualty loss at issue relates to the collapse of petitioners' inground swimming pool as the result of a severe storm accompanied by torrential rains. The deck and surrounding landscape were also damaged or destroyed. The claimed casualty loss was computed on Federal Form 4684 as follows:

Fair market value before the casualty	\$13,000.00
Fair market value after the casualty	<u>-0-</u>
Loss	\$13,000.00
Less: deductible	<u>100.00</u>
Total	\$12,900.00
Less: 10% of adjusted gross income	<u>8,403.00</u>
Net casualty loss claimed	\$4,497.00

Form 4684 also indicated that the swimming pool was constructed in October 1992 at a cost of \$18,000.00.

9. The Division stipulated that the casualty loss claimed had in fact occurred during calendar year 1995. The Division's sole argument was that petitioners had failed to submit sufficient documentation to establish the amount of loss they are properly entitled to.

10. During the hearing, as well as subsequent thereto, petitioners submitted the following documentation:

a- Signed letter dated October 6, 1999 from the State Farm Insurance Co. wherein the agent stated that “there was no coverage afforded for loss in 1995 for collapse of a swimming pool.”

b- Job estimate and agreement from Coming Attractions Construction Co. together with canceled checks establishing that they spent \$4,000.00 in 1995 to remove old decking around the pool, install new footings and framing and install new pressure treated decking and steps to platform and pool level.

c- Contract from Picturesque Pools together with canceled checks establishing that they spent \$9,100.00 in 1995 for work required to repair and rebuild the pool to its condition prior to the casualty.

d- Two 1995 canceled checks to All Country Landscaping totaling \$1,500.00 for repairs to a retaining wall and replacement of the destroyed landscaping.

CONCLUSIONS OF LAW

A. A casualty loss is allowed as a deduction during the taxable year sustained if such loss was “not compensated for by insurance or otherwise”(IRC § 165[a]). Such loss of property, which, as in the instant case, was not connected with a trade or business or a transaction entered into for profit is deductible if such loss arises “from fire, storm, shipwreck, or other casualty or from theft” (IRC § 165[c][3]).

B. Petitioners have shown, through credible evidence, that they are properly entitled to the casualty loss deduction claimed in 1995 of \$4,497.00. Accordingly, such loss is allowed in its entirety.

C. The petition of John E. and Glanita Ryan is granted to the extent provided in Conclusions of Law “B”; the Division is hereby instructed to modify the Notice of Deficiency dated August 17, 1998 with respect to the 1995 tax year so as to be consistent with the

determination rendered herein; and, except as so granted, said petition is in all other respects denied.

DATED: Troy, New York
January 24, 2002

/s/ James Hoefler
PRESIDING OFFICER