

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

LEWIS M. STEEL and KITTY M. STEEL

DECISION

for Redetermination of a Deficiency or for  
Refund of New York State Personal Income Tax  
under Article 22 of the Tax Law and New York :  
City Personal Income Tax under Chapter 46,  
Title T of the Administrative Code of the City :  
of New York for the Years 1979 and 1980.

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Petitioners, Lewis M. Steel and Kitty M. Steel, 101 Central Park West, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1979 and 1980 (File No. 53201).

A 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 February 25, 1986 at 9:15 A.M., with all briefs to be submitted by March 25, 1986. Petitioners appeared by Philip Tanz., C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

#### ISSUE

Whether casualty loss deductions claimed by petitioners in each of the years 1979 and 1980 are properly allowable.

#### FINDINGS OF FACT

1. Lewis M. Steel and Kitty M. Steel (hereinafter "petitioners") filed a New York State Income Tax Resident Return (with City of New York Personal

Income Tax) for each of the years 1979 and 1980. On their 1979 return they claimed a casualty **loss** deduction of \$6,900.00 (\$7,000.00 less \$100.00 limitation). On their 1980 return they claimed a casualty loss deduction of \$7,900.00 (\$8,000.00 less \$100.00 limitation).

2. On June 20, 1983, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioners wherein the aforestated casualty loss deductions were disallowed. Said statement included other technical adjustments which were conceded by petitioners and are therefore not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioners on January 5, 1984 asserting additional 1979 and 1980 New York State and City personal income taxes of \$3,651.15, plus interest of \$1,376.52, for a total due of \$5,027.67.

3. On December 9, 1982, petitioners executed a consent form which extended the period for assessment of 1979 taxes to any time on or before April 15, 1984.

4. The casualty loss deduction claimed for 1979 of \$6,900.00 arose from accidental damage to an oriental rug. According to petitioners' representative, a bottle of red wine was inadvertently knocked off petitioners' table unnoticed. It was purportedly discovered the following day, by which time a stain had set permanently into the rug. The date of the accident was not provided at the hearing.

5. Petitioners submitted an appraisal from D. Kalfain & Son, Inc. dated October 2, 1979, wherein it is stated that:

"There **is** a damage on the open field which cannot be repaired completely. If rug were not damaged the replacement value would be \$10,000. As is the value would be \$3,000."

6. Petitioners' loss was not covered by their insurance policy. According to a letter from the insurance company claims representative, dated December 19, 1979, the basis for not covering such loss was as follows:

"Your policy covers your property on a 'named perils' basis. For a loss to be covered, it must result from a peril specifically listed in the policy contract. Your property is not covered for all risks of physical **loss** or damage.

Unfortunately, since none of the listed perils cover the loss to your oriental rug, we are unable to assist you."

7. Petitioners did not provide documentation to establish the basis of the oriental rug at issue.

8. The casualty **loss** deduction claimed for 1980 of \$7,900.00 arose from water damage to petitioners' house located on Surfside Drive, Long Island, New York.

9. Petitioners alleged that the water damage was due to a strong storm which swept through the area. The date during which the storm occurred was not provided. Water damage occurred to the roof as well as the walls and tiles of the bathroom.

10. Petitioners' loss was not covered by their insurance policy. According to a letter from the insurance company claims representative, dated November 3, 1980, the basis for not covering such loss was as follows:

"From the information submitted it appears the water probably came down the wall from a faulty roof which has since been fixed, and after a period of time the tile has become loose from the wall and will need repairs. Your policy on the house provides coverage for water damage when a storm has made an opening in the roof and water comes in through that opening and then there is coverage for the resulting water damage. However, there is an exclusion against a leak or seepage over a period of time where there is gradual deterioration."

11. Petitioners submitted copies of checks which purportedly established their cost to repair the damage to the house. **Two** checks totaling \$3,950.00, to General Roofing and Siding Co., were dated in September and November, 1979, which was prior to the alleged casualty. Three checks totaling over \$8,000.00 were written in April, May and June, 1981. Bills detailing the nature of the repairs were not submitted.

#### CONCLUSIONS OF LAW

A. That Internal Revenue Code section 165(c)(3) defines a casualty loss as a loss that arises from fire, storm, shipwreck, or other casualty.

B. That an allowable "other casualty" deduction under section 165(c)(3) of the Internal Revenue Code must be "a casualty of the same general nature or kind, as fires, storms, shipwreck." Ray Durden v. Commissioner, 3 T.C. 1, 4 (1944). See also Levy v. Commissioner, 212 F.2d 552 (5th Cir. 1954). An allowable "other casualty" is further defined as "an event due to some sudden, unexpected or unusual cause." (Citation omitted). Durden, 3 T.C. at 3. The term 'casualty' excludes the progressive deterioration of property through a steadily operating cause (Citation omitted)," Id.

C. That losses due to common, every day accidents or occurrences, as distinguished from sudden, unexpected or unusual causes are not deductible as casualty losses.

D. That Treasury Regulation §1.165-7(b) provides that:

"In the case of any casualty loss...the amount **of** loss to be taken into account for purposes of section 165(a) shall be the lesser of either --

- (i) The amount which is equal to the fair market value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty; or


E. That the losses at issue were not casualty losses within the meaning and intent of section 165(c)(3) *of* the Internal Revenue Code. The damage to the rug was the result of a common every day accident, The damage *to* the house resulted from a steady deterioration through a steadily operating cause. Even if such losses could properly be defined as casualty losses, they would necessarily have to be disallowed in the instant case since the adjusted bases *of* the properties at issue were not provided and accordingly *a* dollar value of the losses could not be computed as required under Treasury Regulation §1.165-7(b)

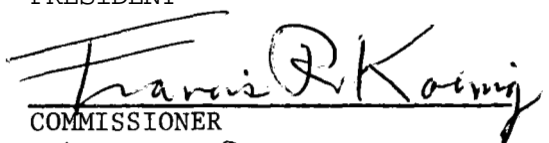
F. That the petition *of* Lewis M. Steel and Kitty M. Steel is denied and the Notice of Deficiency issued January 5, 1984 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

**JUN 17 1986**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER