

POOR  
QUALITY  
THE FOLLOWING  
DOCUMENT (S)  
ARE  
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations*  
*Starks, Donnie B. & Edward*  
*A-2*

TO: **Commissioners Murphy, Palestin & Macduff**

FROM: **Solomon Sies, Hearing Officer**

SUBJECT: **EDWARD STARKS and DONNIE B. STARKS, his wife**

**1955 Assessment #B-564876**  
**1956 Assessment #B-564877**

**Article 16**

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on September 17, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The question to be resolved is the propriety of the disallowance of deductions claimed for repairs and other expenses in connection with rental property.

The assessments were made on March 11, 1959. The taxpayer, Donnie B. Starks, testified at the hearing that the applications for revision or refund for the years 1955 and 1956 were mailed by her personally on March 10, 1960. The mail room stamp on the 1955 Application for Revision or Refund bears the date of March 15, 1960. Since the post-marked envelope is not in the file and there is nothing in the record to controvert the taxpayer's testimony with respect to the date of the mailing of the applications for revision or refund for the years 1955 and 1956, and since there may be a question as to whether or not the application actually was received by the mail room on March 11, 1960, I am of the opinion that the proposed determination which sustains the assessment and denies the applications on substantive grounds should allow the filing as timely.

The taxpayers, on their returns for 1955, claimed deductions of \$1,691.90 for repairs and \$6,698.83 for other expenses. On their return for 1956, they claimed a rental loss of \$7,231.73 and deductions of \$2,306.80 and \$10,732.05 for other expenses. On July 25, 1958, the Income Tax Bureau wrote the taxpayer requesting detailed information in connection with the expenses and deductions claimed by them on their 1955 and 1956 returns. The taxpayers having failed to respond to said letter, additional assessments were made on March 11, 1959 for the years 1955 and 1956 disallowing the deductions for repairs and other expenses in connection with rental property as not being substantiated.

At the hearing the taxpayer submitted a report of the U.S. Treasury Department dated March 6, 1957, showing income tax audit changes for the taxpayers for the year 1955 which reduced the rental loss claimed from \$7,232.73 to \$2,850.26 and disallowed a portion of



**STATE OF NEW YORK**

**STATE TAX COMMISSION**

-----  
**IN THE MATTER OF THE APPLICATION**

**OF**

**EDWARD STARKS and DONNIE B. STARKS,  
his wife**

**FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 16 OF THE  
TAX LAW FOR THE YEARS 1955 AND 1956**  
-----

The taxpayers, Edward Starks and Donnie B. Starks, having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1955 and 1956 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y. on September 17, 1964, at which hearing the taxpayer, Donnie B. Starks, appeared in person before Solomon Sico, Hearing Officer of the Department of Taxation and Finance, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Edward Starks and Donnie B. Starks, his wife, filed joint Federal income tax returns for the years 1955 and 1956; that the taxpayers in their income tax return for the year 1955 claimed deductions of \$1,691.90 for repairs and \$6,696.83 for other expenses in connection with rental property owned by them; that on their income tax return for the year 1956, the taxpayers claimed a rental loss of \$7,381.73 and deductions of \$2,306.80 for repairs and \$10,732.05 for other expenses in connection with rental property; that on March 11, 1959, the Department of Taxation and Finance made additional assessments against the taxpayers for the years 1955 and 1956 (Assessment Nos. E-954876 and E-954877, respectively) disallowing the deductions claimed for repairs and other expenses on the ground that the same were unsubstantiated.

(2) That the taxpayer, Dennis B. Starks, submitted at the hearing a copy of a report of the U.S. Treasury Department, dated March 6, 1957, showing Federal income tax audit changes for the year 1955 which reduced the rental loss claimed from \$7,232.73 to \$2,870.26 and disallowed a portion of interest claimed as a result of which there was a total increase in income against the taxpayers in the sum of \$4,503.97 and a statutory deficiency was imposed by the Internal Revenue Service in the sum of \$139.87 against the taxpayers for the year 1955; that the taxpayers never filed a Form IR-115 (Notice of Federal Change) for the year 1955; that the taxpayer, Dennis B. Starks, testified at the hearing that during the year 1956 the property upon which the deductions were taken was in fact owned by a corporation, 315 West 121st Street Realty Corp., during a portion of the year 1956; that a portion of the expenses deducted for the year 1956 were in connection with alterations; that the taxpayers failed to submit evidence to substantiate the deductions claimed by them for repairs and other expenses in connection with rental income property as claimed upon their income tax returns for the years 1955 and 1956.

(3) That the taxpayers have failed to establish that the deductions taken by them for repairs and other expenses in connection with rental property constituted ordinary or necessary expenses paid or incurred during the taxable years involved herein for the production or collection of income required to be included in gross income in accordance with subdivision 1, §360 of the Tax law.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the taxpayers have failed to establish that the deductions claimed by them for repairs and other expenses for the years 1955 and 1956 constituted ordinary, necessary and proper expenses paid or incurred during the aforementioned years in accordance with subdivision 1, §360 of the Tax law.

(B) That, accordingly, the assessments for the years 1955 and 1956 (Assessment #2-564876 and 2-564877, respectively) are correct; that said assessments do not include any tax or other charge which could not have been lawfully demanded and that the applications for revision or refund filed with respect to said assessments by and the same are hereby denied.

DATED: Albany, New York, on the 13th day of January, 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

/s/

IRA J. PALESTIN

**Commissioner**

**Commissioner**