

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEO BERGER & ARVILLA BERGER

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) 1965

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

State of New York
County of Albany

Lynn Wilson, 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 10th day of May, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon LEO BERGER & ARVILLA BERGER (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Leo and Arvilla Berger
270 Revere Road
Roslyn Heights, New York
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

10th day of May, 1972.

[Signature]

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEO BERGER & ARVILLA BERGER

For a Redetermination of a Deficiency or
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State of New York
County of Albany

Lynn Wilson, 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 10th day of May, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon ROBERT MIRSKY & COMPANY (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert Mirsky & Company
114 East 32nd Street
New York, New York 10016
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

10th day of May, 1972.

James H. Turner

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 10, 1972

Leo and Arvilla Berger
270 Revere Road
Roslyn Heights, New York

Dear Sir and Madam:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
690 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEO BERGER AND ARVILLA BERGER : DECISION
for Redetermination of Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year :
1965. :

Petitioners, Leo Berger and Arvilla Berger, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1965. (File No. 46140341). A formal hearing was held before Solomon Sies, Esq., Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on February 2, 1968, at 1:30 P.M. Robert Mirsky & Company, C.P.A.'s by Marvin Furst appeared for petitioners.

FINDINGS OF FACT

1. Petitioners, Leo Berger and Arvilla Berger, filed a New York State Income Tax Resident Return for the year 1965. On said return they deducted a casualty loss resulting from a theft of personal effects. They claimed a total loss of \$3,200.00 from which they subtracted \$1,000.00 representing insurance reimbursement and \$100.00 representing the exclusion as provided for by section 165 of the Internal Revenue Code leaving a resulting alleged casualty loss deduction of \$2,100.00.

2. On July 31, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Leo Berger and Arvilla Berger, disallowing their casualty loss deduction for the year 1965 upon the grounds that they did not furnish evidence that the items were stolen and that the loss claimed exceeded the amount of insurance reimbursement and accordingly issued a Notice of Deficiency therefore in the sum of \$226.30.

3. On January 29, 1965, petitioners, Leo Berger and Arvilla Berger, were vacationing at the Aztec Motel, Miami Beach, Florida. While they were gone from their motel room, a box containing jewelry was stolen. They immediately reported the theft to the sheriff's office of Dade County, Florida.

4. The following is a schedule of the articles that were stolen and their value to the extent that same has been proven by petitioners, Leo Berger and Arvilla Berger.

<u>DESCRIPTION OF ARTICLE</u>	<u>VALUE</u>
Solid gold bracelet with diamond chips	\$450.00
Solid gold bracelet with 50 Peso charm	250.00
White gold necklace with heart-shaped 1/2 karat diamond pendant	300.00
Single strand cultured pearl choker	100.00
Solid gold bracelet with various charms	250.00
Gold watch with diamond chips	250.00
\$20.00 gold piece and \$80.00 cash	100.00
<u>TOTAL</u>	<u>\$1,700.00</u>

5. Petitioners, Leo Berger and Arvilla Berger, were insured by Newark Insurance Company under a comprehensive dwelling policy. The maximum liability of the insurance company for off premises theft was \$1,000.00 even though the amount of the loss was actually greater. Newark Insurance Company paid \$1,000.00 to them upon their filing a proof of loss for the aforesaid articles.

CONCLUSIONS OF LAW

A. That since petitioners, Leo Berger and Arvilla Berger, during the year 1965, as a result of the theft of jewelry owned by them, sustained a loss in the sum of \$1,700.00 of which \$600.00 was in excess of the first \$100.00 of loss and was not compensated

for by insurance, therefore, they could properly deduct the said sum of \$600.00 from their New York taxable income for said year in accordance with the meaning and intent of section 165 of the Internal Revenue Code.

B. That the petition of Leo Berger and Arvilla Berger is granted to the extent of reducing their theft loss disallowed for the year 1965, from \$2,100.00 in \$1,500.00; reducing their corrected New York taxable income for the year 1965, from \$30,920.51 to \$30,320.51 and reducing the additional personal income tax due for the year 1965 from \$210.00 to \$150.00 and the Notice of Deficiency issued July 31, 1967, in the sum of \$226.30 is reduced to the sum of \$161.62 together with such interest as may be due from July 31, 1967, and except as so granted their petition is in all other respects denied.

DATED: Albany, New York

May 10, 1972.

STATE TAX COMMISSION

COMMISSIONER

Bruce M. Moley

COMMISSIONER

Milton Koern

COMMISSIONER