

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLYDE A. BOYD

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) 1967

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

State of New York
County of Albany

Martha Funaro , 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 1st day of August , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Clyde A. Boyd

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Clyde A. Boyd
17-19 Crocker Avenue
Johnson City, 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

1st day of August , 1972

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Martha Funaro , 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 1st day of August , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon Edward A. Rantanen, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edward A. Rantanen, Esq.
Glezen & Rantanen, Esqs.
First City National Bank Bldg.
Whitney Point, New York 13862
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

1st day of August , 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 1, 1972

**Clyde A. Boyd
17-19 Crocker Avenue
Johnson City, New York**

Dear Mr. Boyd:

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 deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Laisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CLYDE A. BOYD	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Year 1967.	:	

Taxpayer petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1967.

The taxpayer submitted the case on the evidence taken in the case of Kenneth and Donna Boyd at a formal hearing which was held at the offices of the State Tax Commission, Binghamton, New York, on September 17, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Edward A. Rantanen, Esq. and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Did the taxpayer show that the investment of the proceeds from an involuntary conversion of a personal residence and a rental unit held for the production of rental income, in a new personal residence occupied by the taxpayer and a rental unit qualified as an investment in property similar or related in service or use, to such a degree, that there was no taxable gain.

FINDINGS OF FACT

1. Petitioner timely filed a New York State income tax return for the year 1967.
2. A Notice of Determination of deficiency in personal income tax for the year 1967 was issued on July 28, 1969, against petitioner under File No. 74069363.
3. The taxpayer petitioned for redetermination of the deficiencies. The taxpayer contended that there was a reinvestment

of gain from the sale of real property, in like property for a similar use and that he had no taxable gain.

4. A four-unit rental property which had one unit occupied by the taxpayer and in which the taxpayer and his son each owned a one-half interest was taken through condemnation by the State of New York in 1967 for \$32,000.00. The taxpayer's proceeds were \$16,000.00. The taxpayer's original cost was \$10,000.00 (land; \$2,000.00, building; \$8,000.00).

5. The taxpayer's interest consisted of one rental units and one residential unit. The taxpayer's share of depreciation was \$1,440.00 for his one rental unit. The adjusted cost of the taxpayer's interest was \$8,560.00. Of his \$16,000.00 share of the proceeds, the taxpayer's gain was \$16,000.00 less \$8,560.00 recovery of cost, or a gain of \$7,440.00. The gain was allocable \$3,000.00 to taxpayers residential unit and \$4,440.00 to the rental unit.

6. The taxpayer and his father each put \$10,500.00 approximately toward the purchase of a three-unit property, one unit of which was occupied by the taxpayer, one unit of which was occupied by his father, and one unit of which was rental property.

7. Although the taxpayer received \$16,000.00 from the sale of his two units, the taxpayer's new purchase cost \$10,500.00 of which \$7,000.00 was for a personal residence and only \$3,500.00 was for real property.

CONCLUSIONS OF LAW

A. To the extent that the net proceeds from an involuntary conversion are not invested in replacement property, a gain is recognized. Reg. section 1.1033(h)-1.

B. The taxpayer's gain was \$7,440.00. The gain was allocable \$3,000.00 to taxpayer's residential unit and \$4,440.00 to the rental unit. Since the taxpayer's total award on the residential unit was \$8,000.00 and he reinvested \$7,000.00 in residential property, his

taxable gain on the residential property is limited to \$1,000.00. Since the taxpayer's gain on the rental unit was \$4,440.00 and the taxpayer received \$4,500.00 cash which was not reinvested in rental property, the full gain of \$4,440.00 is taxable. The total gain of \$5,440.00 (\$1,000.00 residential and \$4,440.00 rental) is taxable at 50% capital gain rates.

C. The deficiency as modified is sustained, and the taxpayer's petition is denied.

D. Interest shall be added to the total amount of tax due until paid.

DATED: Albany, New York

August 1, 1972.

STATE TAX COMMISSION

Norman Galbraith

COMMISSIONER

Bruce Hawley

COMMISSIONER

Milton Koenig

COMMISSIONER

Boyd
DEPARTMENT OF TAXATION AND FINANCE

EDWARD ROOK

Dear Bruce:

Re: Clyde A. Boyd
Personal Income Tax
Year 1967

I do feel that the statement at the bottom of your letter to Clyde A. Boyd is sufficient to take care of his tax matter as well as Kenneth and Donna Boyd's tax matter.

Ed

6/12/72

Attachement--files