

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

KENNETH & DONNA B. 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

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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 , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Kenneth & Donna B. Boyd (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Kenneth & Donna B. 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  
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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 1, 1972

Kenneth & Donna B. Boyd  
17-19 Crocker Avenue  
Johnson City, New York

Dear Mr. & Mrs. 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 Leisner  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
KENNETH & DONNA B. 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. :

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

A formal hearing 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

Does the investment of the proceeds from an involuntary conversion of a residence held for the production of rental income, in a new residence occupied by the taxpayer, qualify as replacement property similar or related in service or use?

#### FINDINGS OF FACT

1. Petitioners 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 petitioners under File No. 76108294.

3. The taxpayer petitioned for redetermination of the deficiencies. The taxpayer, Kenneth Boyd, 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 taxable gain of \$2,712.00 taxable at 50% capital gain rate.

4. A four-unit rental property which had one unit occupied by the taxpayer's father and in which the taxpayer and his father 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 cost was \$10,000.00 (land \$2,000.00, building \$8,000.00).

5. The taxpayer's interest consisted of two rental units and the taxpayer's share of depreciation was \$2,880.00 for his two rental units. The adjusted cost of the taxpayer's interest was \$7,120.00. Of his \$16,000.00 share of the proceeds, the taxpayer's gain was \$16,000.00 less \$7,120.00 recovery of cost, or a gain of \$8,880.00.

6. The taxpayer and his father each put \$10,552.00 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 rental units, the taxpayer's new purchase cost was \$10,552.00, of which \$7,034.66 was for a personal residence and only \$3,517.34 was for rental 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 investment of proceeds from an involuntary conversion of a residence held for the production of rental income in a new residence occupied by the taxpayer does not qualify as replacement property similar or related in service or use. Rev. Ruling 70-466 1970-2CB 165.

C. The use of two units for residential purposes of taxpayer and his father does not qualify as property held for productive use or investment under section 1033(g) of the Internal Revenue Code.

D. The taxpayer's gain was \$8,880.00 of which capital gain of 50% is applicable, or \$4,440.00 is taxable as ordinary income.

E. The interest income is not in dispute.

F. The deficiency is sustained, and the taxpayer's petition is denied.

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

DATED: Albany, New York

*August 1, 1972.*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Maxley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koenig*  
\_\_\_\_\_  
COMMISSIONER