

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT J. AND GRETCHEN B. LEAK

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

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (g) 22 of the
Tax Law for the Year (g) 1966

State of New York
County of Albany

Katherine D. Manly, 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 11th day of March, 1975, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Robert J. and
Gretchen B. Leak (~~representative of the~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Robert J. Leak
47 Cottam Hill Road
Wappingers Falls, New York 12590

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 the~~
~~xxx~~ 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

11th day of March, 1975.

Katherine D. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Saul Heckelman, Acting
~~President~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York
March 11, 1973

Mr. and Mrs. Robert J. Leak
47 Cottam Hill Road
Wappingers Falls, New York 12590

Dear Mr. and Mrs. Leak:

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

Please take further notice that pursuant to
Section (7) **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

In the Matter of the Petition	:	
of	:	
ROBERT J. and GRETCHEN B. LEAK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1966.	:	

Petitioners, Robert J. and Gretchen B. Leak, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the year 1966.

A formal hearing was held at the offices of the State Tax Commission, Building #9, Room 214A, State Campus, Albany, New York, on June 6, 1972, before L. Robert Leisner, Hearing Officer. The taxpayers appeared personally and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were the taxpayers entitled to a casualty deduction for the drying up of their well in the drought of 1966?

FINDINGS OF FACT

1. Petitioners, Robert J. and Gretchen B. Leak, timely filed New York State income tax returns for the year 1966.
2. A Notice of Determination of deficiencies in personal income taxes for the year 1966 was issued on July 29, 1968,

against the taxpayers under File No. 54932142.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. A drought occurred which affected a well on taxpayers' property. This drought had its inception in 1965 and continued into 1966.

5. The taxpayers' well went dry in July, 1966. The taxpayers went to New Hampshire for a week and their well supplied water before they left. On their return to their home, their well was dry and they had no water. They were confronted by a sudden emergency. There was no water for cooking. Toilets could not be flushed. Their four small children were bathed at one time, the use of paper cups and plates was resorted to, water was brought in from the few neighbors with water and water was attempted to be collected from downspouts with little or no results in the dry weather.

6. Although a new well was required at once, it took almost a month because of the severe drought before taxpayers could get a new well drilled. The new well which finally gave the taxpayers water for their family and home cost \$2,226.80.

7. The taxpayers submitted evidence that they had corresponded with the Internal Revenue Service about the claimed loss for 1966, and they had received a refund from the Internal Revenue Service on the return as filed and to the present date there had been no adjustment for the year 1966 to the present date. Apparently, the Federal statute of limitations has also run on this matter. The taxpayers also asserted lack of jurisdiction

for the Commission to decide this case.

OPINION AND CONCLUSIONS OF LAW

A. With respect to the taxpayers' assertion that there was no jurisdiction over this matter because under Federal conformity his case should be decided by the United States Tax Court, we hold that sections 689 and 690 of the Tax Law provide for the decision of New York State income tax cases by the New York State Tax Commission and for appeal and review of such decisions in the Courts of New York State. Under section 615 of the Tax Law, the itemized deduction in question is governed by Federal law on the same issue. There has been no formal Federal adjudication of the instant issue.

B. The drought was officially declared an emergency in August, 1965 by President L. B. Johnson. The official date of termination of emergency relief was March 15, 1967. Revenue Ruling 66-303 declares that there is much confusion in the public mind about loss from droughts and that taxpayers will be allowed to treat a loss from an unusual and unprecedented drought occurring before January 1, 1966, as a casualty loss. Inasmuch as this drought occurred before January 1, 1966, and caused the sudden drying up of the well, in 1966 the loss was deductible. Revenue Ruling 66-303 is susceptible of differing interpretations and is ambiguous or doubtful as to the length of the drought, citing as an example damage to shrubs, which is a much more remote type of damage than damage to a water well from a drought. We construe this Federal Revenue Ruling on the effect of a drought in favor of the taxpayers.

C. The taxpayers' petition is sustained and it is ordered that the taxpayers shall receive the full refund claimed together with interest thereon until paid.

DATED: Albany, New York
March 11, 1975

STATE TAX COMMISSION

COMMISSIONER

Bruce Mouley

COMMISSIONER

Milton Krum

COMMISSIONER