

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MYER and NATALIE LEVINE

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)~~ 1966

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

State of New York
County of Albany

JANET MACK

, 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 21st day of May , 1975 , she served the within

Notice of Decision (~~of the Department of Taxation and Finance~~) by (certified) mail upon Myer and Natalie

Levine (~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

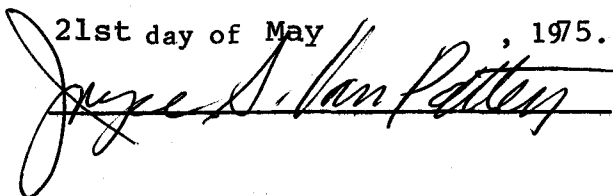
wrapper addressed as follows: Mr. & Mrs. Myer Levine
21 Concord Avenue
Plattsburgh, New York 12901

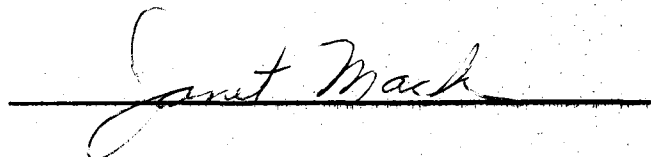
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~)
~~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

21st day of May , 1975.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
James H. Tully, Jr.
~~MARIO A. PROCCACCIO~~ 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
May 21, 1975

Mr. & Mrs. Myer Levine
21 Concord Avenue
Plattsburgh, New York 12901

Dear Mr. & Mrs. Levine:

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

Please take further notice that pursuant to
Section (x) **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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: ~~Robert J. Condon, Representative~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MYER AND NATALIE LEVINE : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1966.

Myer and Natalie Levine, 21 Concord Avenue, Plattsburgh, New York 12901, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1966.

Said deficiency was asserted by notice issued June 30, 1969, under File No. 58682404 and is in the amount of \$134.46 plus interest of \$17.81 for a total of \$152.27.

In lieu of a hearing, the petitioners submit their case to the Commission on the file of the Income Tax Bureau.

Said file has been duly examined and considered.

ISSUE

The issue in this case is whether a loss incurred upon the sale of a house held for rental income is deductible under section 165 of the Internal Revenue Code in full as an ordinary loss derived from property used in the trade or business as defined in section 1231(b) of the Internal Revenue Code, or

whether the loss is a capital loss deductible only in part under section 165(f) and 1211 of the Internal Revenue Code as a loss from a capital asset as defined in section 1221 of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioners resided during the taxable year in Plattsburgh, New York. Mr. Levine is in the furniture business there.

2. Petitioners owned jointly a wood-frame dwelling house located at 1903 Baker Avenue in Utica, New York. This house was rented out from 1961 to 1966. It was sold in 1966 for a sale price of \$12,000.00. Petitioners suffered a loss of \$4,259.31.

CONCLUSIONS OF LAW

Rental real estate is itself a trade or business and the loss therefrom is deductible in full (see Wasnok, U.S. Tax Court memo dec. 1971-6).

The deficiency in issue is erroneous in its entirety and is cancelled.

DATED: Albany, New York
May 21, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER