

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AUSTIN F. RELLER and PAMELA J. RELLER

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 ~~13~~ 22 of the
Tax Law for the Year ~~19~~ 1968.

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 10th day of December, 1975, she served the within
Notice of Decision ~~XXX XXXXXXXXXXXXX~~ by (certified) mail upon AUSTIN F. RELLER
and PAMELA J. RELLER ~~XXXXXXXXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Austin F. Reller
224 East 10th Street
New York, New York 10003

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 ~~XXXXXXXXXXXXXX~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

10th day of December, 1975.

Mary Shoff

Janet Mack

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

AUSTIN F. RELLER and PAMELA J. RELLER : DECISION

for a Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1968. :

Petitioners, Austin F. Reller and Pamela J. Reller, 224 East 10th Street, New York, New York 10003, petitioned for a redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the year 1968.

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 17, 1974, at 9:45 A.M., before L. Robert Leisner, Hearing Officer. The taxpayer appeared pro se and the Income Tax Bureau was represented by Saul Heckelman, Esq., (James Scott, Esq. of counsel).

ISSUE

Whether a deduction claimed by petitioners for depreciation on a Stradivarius violin should be allowed?

FINDINGS OF FACT

1. Petitioners, Austin F. Reller and Pamela J. Reller, timely filed New York State income tax return for the year 1968.
2. A Notice of Determination of deficiencies in personal income taxes for the year 1968 was issued on May 24, 1971, against the taxpayers under File No. 16686876.
3. The taxpayers petitioned for redetermination of the deficiencies.
4. Petitioner, Austin F. Reller, is a concert violinist. He has studied the violin with teachers in both the United States and Europe and made his debut in 1962 with the San Francisco Symphony. Since then he has given debut recitals in London, Amsterdam and New York.
5. Petitioner, Austin F. Reller, owns three violins: a \$200 instrument that was his first violin, a Guadagnini and a Stradivarius that he acquired in September, 1967.
6. The instrument in issue is the DeRougemont Stradivarius purchased in 1967 by petitioner for \$45,000. The violin was made in 1703 and was kept virtually unused until the 1930's. After petitioner, Austin F. Reller, purchased the instrument he used it for seven or eight hours a day and used it exclusively for concerts during that year and subsequent years until 1974. During the period that he used the Stradivarius exclusively, petitioner had it insured for \$45,000.

7. Petitioner testified at the formal hearing that an old violin, such as the Stradivarius, when used professionally over a number of years, shows signs of the use. The wood of the violin has to be replaced and patches must be added to reinforce the original wood. The pressure of the strings eventually destroys the arching. In addition, climatic conditions, such as humidity and cold, open up cracks in the instrument which affect the violin tonally. The varnish is often worn away and must be replaced, a process which affects the value of an old instrument.

8. The Stradivarius purchased by petitioner in 1967 has opened up several times at the seams and has had to be reglued.

9. Petitioner gave evidence of the Internal Revenue Service allowing the deduction for depreciation of violins in other cases. He also furnished a letter from Rembert Wurlitzer, a renowned violin maker and dealer, which stated that under constant use by a professional, a fine violin does depreciate (Exhibit 2 from the formal hearing).

CONCLUSIONS OF LAW

A. The use of a fine violin, such as the Stradivarius belonging to petitioner, does affect the value of the instrument. A violin bought and used by a professional does not necessarily appreciate in value merely because it is a fine instrument.

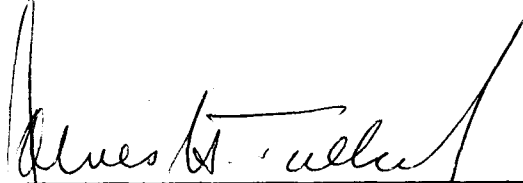
B. The value of the Stradivarius violin purchased by petitioner in 1967 was depreciated by his use. Elliott v. United States, 250 F. Supp. 322 (1965).

C. The depreciation allowance claimed as a deduction by petitioners on their 1968 New York State income tax return was proper.

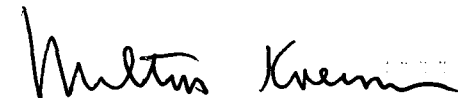
D. The taxpayers' petition is sustained. It is determined that there are no deficiencies against petitioners in income tax.

DATED: Albany, New York
December 10, 1975

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER

COMMISSIONER