In the Matter of the Petition

οf

NORWOOD K. TALBERT

AFFIDAVIT OF MAILING

and ANN M. TALBERT a Redetermination of a Defic

For a Redetermination of a Deficiency or a Revision of a Determination or a Refund of Personal Income : Taxes under Article (%) 22 of the Tax Law for the Year (%) 22 \tax 1971.:

State of New York County of Albany

Catherine Steele

, 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 September , 1976, she served the within

Notice of Decision by (certified) mail upon Norwood K. Talbert and

Ann M. Talbert (representative xx) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. & Mrs. Norwood K. Talbert

7586 Cavalry Circle

Manlius, New York 13104

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representations of xing) petitioner herein and that the address set forth on said wrapper is the last known address of the (FEFFESSHEEFEETER) petitioner.

Sworn to before me this

10th day of September . 1976

Catherine Itele.

TA-3 (2/76)



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 10, 1976

TELEPHONE: (518457-3850

Mr. & Mrs. Norwood K. Talbert 7586 Cavalry Circle Manlius, New York 13104

Dear Mr. & Mrs. Talbert:

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

Please take further notice that pursuant to Section 690 of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 4 months from the date of this notice.

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. They will be referred to the proper party for reply.

Pawl B. Coburn

Supervising Tax Hearing Officer

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Enc.

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

NORWOOD K. TALBERT and ANN. M. TALBERT

DECISION

for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1971.

Petitioners, Norwood K. Talbert and Ann M. Talbert, residing at 7586 Cavalry Circle, Manlius, New York 13104, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971. (File No. 74592110). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York on March 29, 1976, at 3:00 p.m. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the re-siding of a residence to facilitate its sale and the installation of a new hot water heater were deductible from petitioners' income as repairs.

FINDINGS OF FACT

- 1. Petitioners, Norwood K. Talbert and Ann M. Talbert, timely filed a New York State income tax return for the year 1971. They deducted from gross income the sum expended for the re-siding of their residence, the installation of a new hot water heater and the cost of laying down of new flooring in the bathroom.
- 2. On September 24, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Norwood K. Talbert and Ann M. Talbert, disallowing these deductions claimed as expenses and accordingly a Notice of Deficiency was issued in the amount of \$146.36, plus interest of \$12.66 for a total of \$159.02. On March 15, 1974, the Income Tax Bureau allowed the new flooring as a deductible expense. The petitioners did not contest the disallowance of a deduction for a new hot water heater.
- 3. The re-siding of petitioners', Norwood K. Talbert and Ann M. Talbert's, residence with aluminum facilitated its sale soon after the work was completed.

CONCLUSIONS OF LAW

A. That deductible repairs must be distinguished from expenditures for improvements, additions, renovations, alterations, etc., which are capital expenditures and may not be deducted as expenses. Repairs are deductible if they do not materially add

to the value of the property and do not materially prolong the life of the property.

- B. That the improvement of petitioners', Norwood K.

 Talbert and Ann M. Talbert's, residence with aluminum siding was a capital expenditure that materially added to the value of said property and prolonged its life. It was a capital improvement pursuant to section 263 of the Internal Revenue Code and not a repair pursuant to section 162 of the Internal Revenue Code.
- C. That the petition of Norwood K. Talbert and Ann M. Talbert is denied and the Notice of Deficiency of September 24, 1973, subsequently modified, is sustained.

DATED: Albany, New York September 10, 1976 STATE TAX COMMISSION

PRESIDENT

COMMISSIONED

COMMISSIONER