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TA-1.12 (1/76)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
NORWOOD K. TALBERT	:	DECISION
and ANN. M. TALBERT	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

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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

  
COMMISSIONER

  
COMMISSIONER