

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT S. WOLFSOHN and INEZ WOLFSOHN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (X) 22 of the :
Tax Law for the Year (~~XXXX Period(s)~~) 1970.:

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 23rd day of August, 1976, she served the within Notice of Decision by (certified) mail upon Robert S. Wolfsohn and Inez Wolfsohn (~~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. Robert S. Wolfsohn
95 Meadow Road
Buffalo, New York
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 (~~representative of the~~) 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

23rd day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT S. WOLFSOHN and INEZ WOLFSOHN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~XX~~ 22 of the :
Tax Law for the Year ~~(XXXXXX)~~ 1970.:

State of New York
County of Albany

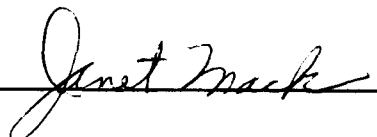
Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of August, 1976, she served the within
Notice of Decision by (certified) mail upon Joseph L. Brock, CPA

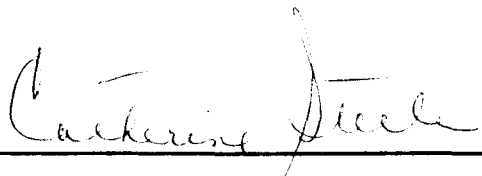
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph L. Brock, CPA
Brock, Schechter & Polakoff
760 Hotel Statler Hilton
Buffalo, New York 14202
and by depositing same enclosed in a postpaid properly 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 (representative
of the) 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

23rd day of August, 1976







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 23, 1976

TELEPHONE: (518) ~~457-3850~~

Mr. & Mrs. Robert S. Wolfsohn
95 Meadow Road
Buffalo, New York

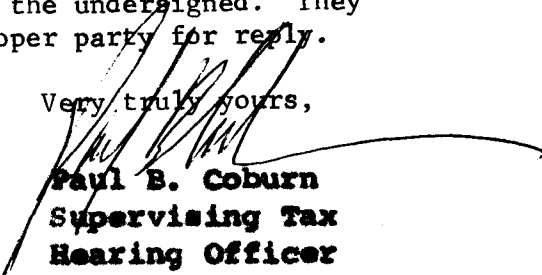
Dear Mr. & Mrs. Wolfsohn:

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

Please take further notice that pursuant to
Section ~~XX~~ **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.

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.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT S. WOLFSOHN and : DECISION
INEZ WOLFSOHN :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article: :
22 of the Tax Law for the Year 1970. :

Petitioners, Robert S. Wolfsohn and Inez Wolfsohn, 95 Meadow Road, Buffalo, New York, petitioned for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 01587).

A formal hearing was held at the offices of the State Tax Commission, Buffalo, N.Y. on April 27, 1976 before L. Robert Leisner, Hearing Officer. The petitioners appeared by Joseph L. Brock, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of Counsel).

ISSUE

Whether the property in issue was held for the production of income under section 212 of the Internal Revenue Code so that the loss was deductible from income.

FINDINGS OF FACT

1. Petitioners, Robert S. Wolfsohn and Inez Wolfsohn, timely filed New York State income tax returns for the years 1970.

2. A Notice of Deficiency in personal income tax for the year 1970 was issued on March 25, 1970 against petitioners, Robert S. Wolfsohn and Inez Wolfsohn under File No. 64071602.

3. The petitioners, Robert S. Wolfsohn and Inez Wolfsohn petitioned for redetermination of the deficiencies.

4. Petitioners, Robert S. Wolfsohn and Inez Wolfsohn in 1969 entered into a home building agreement for a home at 70 Farmington Rd. They had talked to the builder about land for investment and he informed them that homes must be built with the land purchase. They were told that property would go up very drastically in this area. They put features into the home that they felt would enhance its sale. They owned two other homes. They built this home for resale.

5. The sale and title closing of 70 Farmington Rd. to the petitioners, Robert S. Wolfsohn and Inez Wolfsohn took place on December 18, 1969 immediately on completion of building.

6. Petitioners, Robert S. Wolfsohn and Inez Wolfsohn never occupied 70 Farmington Rd. They immediately put the property up for sale.

7. The market for real estate in this area was at a 25 year low according to petitioners, Robert S. Wolfsohn and Inez Wolfsohn's advisors. The sale could not be had for some time and finally in March of 1970 they sold the property at a loss.

8. The Income Tax Bureau determined that the loss was not allowable as a regular loss holding that it was not established that the property was held for the production of income or for use in a trade or business.

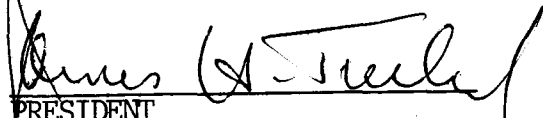
CONCLUSIONS OF LAW

A. That the fact of immediate listing for sale and the total lack of occupancy by the petitioners, Robert S. Wolfsohn and Inez Wolfsohn is decisive. Section 165(c)(2) Int. Rev. Code, Albert W. Bassett T.C. Memo 1976-14. The property sold was held for the production of income, and the loss on the sale in 1970 is deductible.

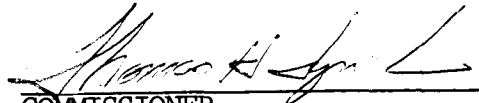
B. That the petition of Robert S. Wolfsohn and Inez Wolfsohn is sustained and it is determined that there is no deficiency in income tax against them for the year 1970.

DATED: Albany, New York
August 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER