

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SHELDON and MERCEDES BERGER

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 ~~(x) 1970~~ (x) 1970. :

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of March , 1977, he served the within
Notice of Decision by (certified) mail upon Sheldon & Mercedes Berger

(~~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. Sheldon Berger
377 Westchester Avenue
Port Chester, 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

24th day of March , 19 77

Bruce Batchelor

Janet Mael

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SHELDON and MERCEDES BERGER

AFFIDAVIT OF MAILING

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 ~~(s) or Period(s)~~ 1970.:
:

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of March , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Martin Liss, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Martin Liss, CPA
Liss, Knee & Okun
44 Beaver Street
New York, New York 10004
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

24th day of March , 1977.

Bruce Batchelor

Janet Mach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 24, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Sheldon Berger
377 Westchester Avenue
Port Chester, New York

Dear Mr. & Mrs. Berger:

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

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

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

In the Matter of the Petition :
of :
SHELDON and MERCEDES BERGER :
for Redetermination of Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year :
1970. :

Petitioners, Sheldon and Mercedes Berger, residing at 377 Westchester Avenue, Port Chester, New York, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File No. 0-58782682). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1976 at 10:45 A.M. Petitioners appeared by Martin Liss, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

FINDINGS OF FACT

1. Petitioners, Sheldon and Mercedes Berger, filed a timely New York State combined personal income tax return for 1970 on which they claimed a casualty loss in the amount of \$2,000.00. The Income Tax Bureau contended that petitioners had failed to substantiate the casualty loss and disallowed said loss. Other adjustments were made to petitioners, Sheldon and Mercedes Berger's return which were agreed to by petitioners and are not issues.

2. A Notice of Deficiency was issued September 24, 1973 against petitioner, Sheldon Berger, for the year 1970, in the amount of \$358.78 personal income tax due, plus \$52.55 interest, for a sum of \$411.33.

3. On January 24, 1970, petitioners, Sheldon and Mercedes Berger's home was broken into and many items stolen. The insurance claim was agreed as follows:

<u>Item</u>	<u>Claim</u>	<u>Allowed and Paid</u>
Jewelry	\$2,569.00	\$ 250.00
Cash and numismatic property	1,244.50	100.00
Miscellaneous personal property	1,357.00	1,026.00
Building damage	<u>199.00</u>	<u>49.00</u>
	\$5,369.50	\$1,425.00

4. Petitioners, Sheldon and Mercedes Berger, contended that the amounts allowed for jewelry and cash and numismatic property were limited to \$250.00 and \$100.00 respectively by the terms of the insurance contract and that the amount they claimed was indeed

the loss actually suffered on these two items. As for miscellaneous personal property and building damage, the insurance company allowed and paid the depreciated value of the items claimed.

5. Petitioners, Sheldon and Mercedes Berger, contended that the jewelry and numismatic property were collected over the years by gift and purchase. No evidence was introduced as to the existence, cost or value of these items.

CONCLUSIONS OF LAW

A. That petitioners, Sheldon and Mercedes Berger, have not sustained the burden of proof in accordance with section 689(e) of the Tax Law in substantiating the claimed casualty loss and, therefore, the casualty loss was properly disallowed.

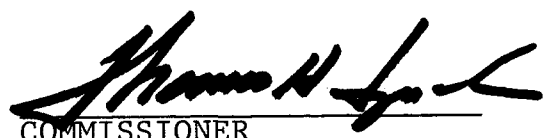
B. That the petition of Sheldon and Mercedes Berger is denied and the Notice of Deficiency issued September 24, 1973, to petitioner, Sheldon Berger, for the year 1970, is sustained.

DATED: Albany, New York
March 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SHELDON and MERCEDES BERGER

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

Bruce Batchelor , 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 5th day of April , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Sheldon and Mercedes
Berger (~~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. Sheldon Berger
3333 Henry Hudson Parkway
Bronx, NY 10463

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

5th day of April , 1977.

Bruce Batchelor

Janet Back

TA-26 (4-7-6) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

OPD
3.28.77

Mr. & ~~Mrs.~~ Sheldon Berger
377 Westchester Avenue
Port Chester, New York

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

RECEIVED
JUN 10 1976
FEDERAL CENTER
UNCLAIMED
ADDRESS
INSUFFICIENT
NO SUCH OFFICE
NO SUCH OFFICE IN STATE
NO SUCH OFFICE IN THIS COUNTRY

Mr. & Mrs. Sheldon Berger
3333 Henry Hudson Parkway
Bronx NY 10463

*See list for
76741*



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

March 24, 1977

TELEPHONE: (518) 457-1723

REMAILED: April 5, 1977

Mr. & Mrs. Sheldon Berger
377 Westchester Avenue
Port Chester, New York

Dear Mr. & Mrs. Berger:

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.

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,

Frank J. Puccia
Frank J. Puccia

Enc.

Supervisor of Small
Claims Hearings

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SHELDON and MERCEDES BERGER	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioners, Sheldon and Mercedes Berger, residing at 377 Westchester Avenue, Port Chester, New York, have filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970. (File No. 0-58782682). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1976 at 10:45 A.M. Petitioners appeared by Martin Liss, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Did petitioners, Sheldon and Mercedes Berger, properly substantiate the amount claimed as a casualty loss deduction for the year 1970?

FINDINGS OF FACT

1. Petitioners, Sheldon and Mercedes Berger, filed a timely New York State combined personal income tax return for 1970 on which they claimed a casualty loss in the amount of \$2,000.00. The Income Tax Bureau contended that petitioners had failed to substantiate the casualty loss and disallowed said loss. Other adjustments were made to petitioners, Sheldon and Mercedes Berger's return which were agreed to by petitioners and are not issues.

2. A Notice of Deficiency was issued September 24, 1973 against petitioner, Sheldon Berger, for the year 1970, in the amount of \$358.78 personal income tax due, plus \$52.55 interest, for a sum of \$411.33.

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5. Petitioners, Sheldon and Mercedes Berger, contended that the jewelry and numismatic property were collected over the years by gift and purchase. No evidence was introduced as to the existence, cost or value of these items.

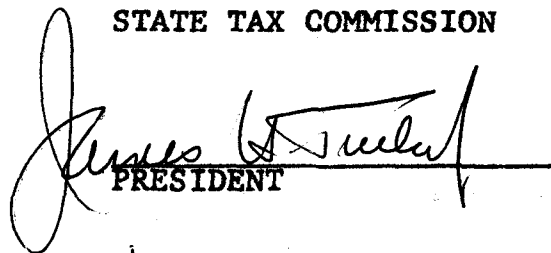
CONCLUSIONS OF LAW

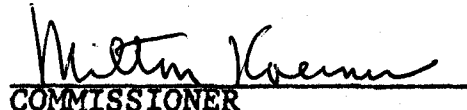
A. That petitioners, Sheldon and Mercedes Berger, have not sustained the burden of proof in accordance with section 689(e) of the Tax Law in substantiating the claimed casualty loss and, therefore, the casualty loss was properly disallowed.

B. That the petition of Sheldon and Mercedes Berger is denied and the Notice of Deficiency issued September 24, 1973, to petitioner, Sheldon Berger, for the year 1970, is sustained.

DATED: Albany, New York
March 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER