

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ADAM J. and ELEANOR KORABEK

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) or Period (x) 1973.:

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 18th day of January, 1977, he served the within
Notice of Decision by (certified) mail upon Adam J. & Eleanor
Korabek (~~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. Adam J. Korabek
7759 Back Creek Road
Hamburg, New York 14075

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~~
~~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
18th day of January, 1977.

Bruce Batchelor

Jant Mack



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

January 18, 1977

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

Mr. & Mrs. Adam J. Korabek
7759 Back Creek Road
Hamburg, New York 14075

Dear Mr. & Mrs. Korabek:

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

Please take further notice that pursuant to
Section(~~2~~) **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: ~~XXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ADAM J. and ELEANOR KORABEK : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1973. :

Petitioners, Adam J. and Eleanor Korabek, 7759 Back Creek Road, Hamburg, New York 14075, 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 1973. (File No. 46152959). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on September 17, 1976 at 9:15 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq. of counsel).

ISSUE

Did the petitioners sustain a casualty loss entitling them to an allowable itemized deduction?

FINDINGS OF FACT

1. Petitioners, Adam J. and Eleanor Korabek, filed a New York State combined income tax return for 1973. On this return they claimed a casualty loss in the sum of \$17,400.00 for property damage resulting from a fire.

2. On September 29, 1975, the Income Tax Bureau issued separate Statement of Audit Changes against petitioners, Adam J. and Eleanor Korabek, disallowing an exemption of \$650.00 and a deduction for a casualty loss for \$17,400.00 and reducing the itemized deductions taken for taxes. The Income Tax Bureau then allowed the petitioner the standard deduction of \$2,000.00 because the adjustments made on the Statement of Audit Changes reduced the itemized deductions to an amount less than the minimum standard deduction. The additional personal income tax due for 1973 from Adam J. Korabek was \$258.50 and from Eleanor Korabek, the additional tax due was \$236.98. The Income Tax Bureau disallowed the casualty loss because the petitioner was unable to verify the cost of the property and the improvements thereto.

3. On December 19, 1975, a petition for redetermination of deficiency or for refund of personal income tax was filed by Adam J. and Eleanor Korabek for the year 1973. The petitioners are only contesting the disallowance of the casualty loss.

4. Petitioners, Adam J. and Eleanor Korabek's home was completely destroyed by fire on December 11, 1973. The petitioners purchased a single family frame dwelling for \$8,500.00 in 1956. During the period from 1956 through 1973 the petitioner, Adam J. Korabek, completely rebuilt and remodeled the original house. On two separate occasions, the petitioners had taken construction mortgages on the premises in the amounts of \$20,000.00 and \$10,000.00 and additionally over this period invested another \$5,000.00 in their dwelling for the purposes of adding a second story and making other improvements. The total investment in the land and building prior to the fire was \$43,500.00.

5. Petitioners, Adam J. and Eleanor Korabek, determined their casualty loss of \$17,500.00, by reducing their total investment of \$43,500.00 by \$20,000.00, which was the amount of their insurance claim and by \$6,000.00, which represents the land value.

6. An appraisal performed by an agent for the Allstate Insurance Company on December 12, 1973, indicated that the current replacement cost of the building would be \$41,605.00. This cost is exclusive of the value of an improved lot.

7. Petitioners, Adam J. and Eleanor Korabek, received insurance claim payments of \$20,000.00 for their dwelling and \$10,000.00 for their personal property from Allstate Insurance Company. Both payments represented the maximum limit of liability so covered under the petitioners' homeowners policy.

8. Petitioners, Adam J. and Eleanor Korabek's 1973 U.S. individual income tax return, on which a deduction for the casualty loss of \$17,400.00 was claimed, was accepted as filed by the Internal Revenue Service.

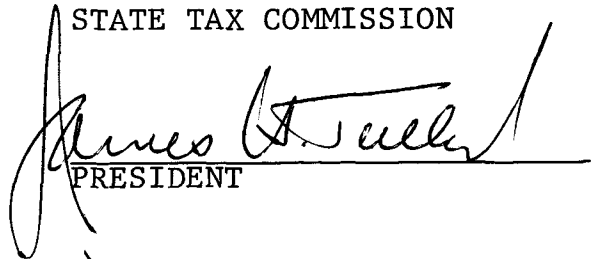
CONCLUSIONS OF LAW

A. That the petitioners, Adam J. and Eleanor Korabek, have sustained a casualty loss in the amount of \$17,400.00 and are entitled to claim this loss as an itemized deduction in accordance with section 165 of the Internal Revenue Code.

B. That the petition of Adam J. and Eleanor Korabek is granted to the extent that the casualty loss of \$17,400.00 is an allowable itemized deduction and that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued September 29, 1975, and, that except as so granted the petition is in all other respects denied.

DATED: Albany, New York
January 18, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER