

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ZENEK PODOLSKY and FELA PODOLSKY : 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)~~ ~~xxxx Period (s)~~ 1971:

State of New York  
County of Albany

John Huhn , 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 20 day of September, 1978, he served the within  
notice of decision by (certified) mail upon Zenek Podolsky and  
Fela Podolsky  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Zenek Podolsky and Fela Podolsky  
2701 East 66th Street  
Brooklyn, New York 11234  
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)~~  
~~xxxxxxx~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

20 day of September, 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ZENEK PODOLSKY and FELA PODOLSKY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of **Personal Income**  
Taxes under Article ~~(3)~~ 22 of the  
Tax Law for the Year ~~(3) XXX XXXXX (3)~~ 1971.

State of New York  
County of Albany

John Huhn, 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 20 day of September, 1978, he served the within  
notice of decision by (certified) mail upon Herman Spilfogel, CPA

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Herman Spilfogel, CPA  
2624 Avenue U  
Brooklyn, New York 11229

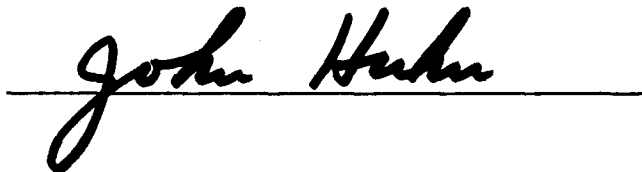
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

20 day of September, 1978







STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**September 20, 1978**

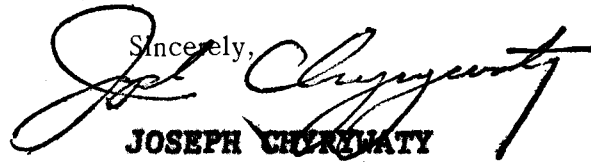
**Zenek Podolsky and Fela Podolsky  
2701 East 66th Street  
Brooklyn, New York 11234**

**Dear Mr. & Mrs. Podolsky:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(X) 690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,  
  
**JOSEPH CHIRWATY**  
**Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ZENEK and FELA PODOLSKY	:	DECISION
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, Zenek and Fela Podolsky, 2701 East 66th Street, Brooklyn, New York 11234, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 10644).

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 September 29, 1977 at 10:45 A.M. Petitioner Zenek Podolsky appeared pro se and for his wife, and by Herman Spilfogel, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUES

I. Whether four properties which were taken from petitioners by the City of New York in condemnation proceedings were replaced by properties which were similar or related in service or use to the condemned properties.

II. Whether taxable and deferred gains were to be determined by applying each replacement property to each condemned property, or whether petitioners could elect to report the full amount of gain on two of the condemned properties and apply the sum of the amounts realized on the other two condemned properties against the cost of the four replacement properties.

FINDINGS OF FACT

1. Petitioners, Zenek and Fela Podolsky, timely filed a New York State personal income tax return for the year 1971 in which they included a capital gain in the amount of \$147.03. Said amount constituted the excess condemnation award for real property known as 2953-57 West 25th Street, Brooklyn, New York ("property A"), above the cost of replacement of said property. They deferred all gain on three other properties for which condemnation awards had been received and replacement properties had been purchased. Said other condemned properties were located at 2842 West 27th Street ("property B"), 2965 West 25th Street ("property C") and 2947-49 West 25th Street ("property D"), all in Brooklyn.

2. The Income Tax Bureau contended that all gain realized from the condemnation award for property A, in excess of the adjusted cost basis, was a taxable capital gain, since the cost of replacement was less than the adjusted cost basis of the condemned property. The Income Tax Bureau also recomputed petitioners' computations as to properties B, C and D to arrive at corrected taxable gain, deferred

gain and adjusted basis of the replacement properties. Petitioners did not contest the accuracy of the recomputation. The Income Tax Bureau issued a Statement of Audit Changes, combining each condemned property with a replacement property in the same manner as had petitioners. Accordingly, it issued a Notice of Deficiency on February 25, 1974 in the amount of \$1,112.28 in personal income tax, plus \$124.17 in interest, for a sum of \$1,236.45.

3. Petitioners contended that the money amounts received upon condemnation of four condemned properties (i.e., properties A, B, C and D) were amounts used to timely purchase four like replacement properties (hereinafter referred to as properties 1, 2, 3 and 4) which were similar or related in service or use. Petitioners further contended that they were not required to compute a separate capital gain for each of the condemned properties by combining one condemned property with one replacement property. Rather, they held that they could (in order to defer a greater amount of gain) combine two condemned properties with four replacement properties and elect to report the capital gain in full with respect to the two remaining condemned properties.

4. The Income Tax Bureau contended that the four condemned properties were separate and distinct and could have been conveyed separately; therefore separate computations should have been made in determining the capital gain attributable to each. The Bureau further contended that for purposes of such computation, a condemned property should be combined with its replacement property only.

5. Properties A, B, C and D were located in the Coney Island area of Brooklyn, New York. When said properties were condemned by the City of New York, petitioners purchased nearby replacement properties with the condemnation awards received. All properties (both the condemned properties and those purchased as replacements) were small two to six family houses of like character, which petitioners held for rental income.

6. At the hearing, petitioners offered to revise their position and to report the capital gain in full on two of the condemned properties (i.e., properties A and B) without combining with replacement properties and to combine the other two condemned properties (i.e., properties C and D) with the four replacement properties.

#### CONCLUSIONS OF LAW

A. That the condemned properties and the replacement properties were properties of like character, which were similar or related in service or use within the meaning and intent of sections 1031 and 1033 of the Internal Revenue Code.

B. That petitioners, Zane and Fela Podolsky, may or may not elect to defer payment of the tax on part of the gain resulting from the replacement of the condemned property with property of like character, in accordance with the meaning and intent of section 1033 of the Internal Revenue Code.

C. That the petition of Zaneck and Fela Podolsky is granted to the extent that petitioners may elect to report all capital gain on two properties without consideration of replacement property and may elect to combine two condemned properties with four replacement properties to defer part of the gain. The Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued February 25, 1974 as follows:

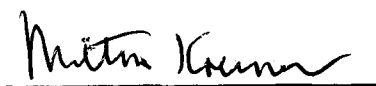
1. Condemned property A, 2953-57 West 25 Street and condemned property B, 2842 West 27th Street are each to be taxed on the entire capital gains on condemnation in the amounts of \$8,858.33 and \$9,994.19, less the respective deductions allowable under section 1202 of the Internal Revenue Code and,
2. condemned property C, 2965 West 25th Street and condemned property D, 2947-49 West 25th Street are to be combined with all four replacement properties as a unit to determine taxable gain and deferred gain, and, the adjusted basis of the replacement properties are to be determined in accordance with section 1033 of the Internal Revenue Code and the regulation thereunder.

D. That except as granted in Conclusion of Law "C", above, the petition is in all other respects denied.

DATED: Albany, New York  
September 20, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER





New York State Department of  
**TAXATION and FINANCE**  
**TAX APPEALS BUREAU**

TO . . . Secretary to the New York State Tax Commission

Please attach to Decision. Decision was  
remailed October 24, 1978.

10/24/78

*Zenek Podolsky & Fela Podolsky*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ZENEK PODOLSKY and FELA PODOLSKY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(3)~~ 22 of the :  
Tax Law for the Year ~~(XXXXXX PERIOD)~~ 1971 :

State of New York  
County of Albany, New York

John Huhn , 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 24th day of October , 1978, she served the within  
Notice of Decision by ~~(certified)~~ mail upon Zenek & Fela Podolsky  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Zenek & Fela Podolsky  
2701 East 66th Street  
Brooklyn, New York 11234  
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the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ ~~(representative of the)~~ petitioner.

Sworn to before me this

24th day of October , 1978.

*H. Huhn*

*John Huhn*

SMALL CLAIMS

TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

9/24/76

CLAIM CHECK NO.

277122

☐ HOLD

DATE

9-14-76

NO NOTICE

Zenek Podolsky and Peta Podolsky  
2701 East 66th Street  
Brooklyn, New York 11230