

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR T. AND EZERIA W. DAVIDSON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income

Taxes under Article ~~(ss)~~ 22 of the  
Tax Law for the Year(s) ~~XXXXXX~~  
1968 and 1969

State of New York  
County of Albany

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 January, 1979, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Arthur T. and  
Ezeria W. Davidson (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Arthur T. and Ezeria W. Davidson  
16 Montgomery Place  
New Rochelle, NY 10801

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 (~~XXXXXXXXXXXX~~  
~~XXXXXX~~) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~XXXXXXXXXXXXXXXXXXXX~~) petitioner.

Sworn to before me this

24th day of January, 1979.

Marilyn J. Papmian

John Huhn



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

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

January 24, 1979

Arthur T. and Ezeria W. Davidson  
16 Montgomery Place  
New Rochelle, NY 10801


Dear Mr. & Mrs. Davidson:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~69~~ **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 **four 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 Chyrywat  
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ARTHUR T. AND EZERIA W. DAVIDSON	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the	:	
Years 1968 and 1969.	:	

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Petitioners, Arthur T. and Ezeria W. Davidson, 16 Montgomery Place, New Rochelle, New York 10801, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969 (File No. 11831).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 31, 1977 at 2:45 P.M. Petitioner Arthur T. Davidson appeared pro se and for his wife, petitioner Ezeria W. Davidson. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioners were entitled to a carryover loss in 1968 for a net operating loss which occurred in 1967.

II. Whether petitioners were entitled to a casualty loss sustained during 1969.

FINDINGS OF FACT

1. Petitioner Arthur T. Davidson and his wife, petitioner Ezeria W. Davidson filed joint New York State income tax resident returns for 1968 and 1969.

2. On April 10, 1972, the Income Tax Bureau issued a Notice of Deficiency for additional personal income tax of \$1,862.33 for 1968, whereby:

- (a) a net operating loss carryover of \$29,093.87 was disallowed,
- (b) an arithmetic correction was made, which reduced the gross Federal itemized deductions from \$10,264.19 to \$6,669.49, and
- (c) the deduction for life insurance premiums was reduced from \$488.00 to \$300.00, the maximum allowable pursuant to section 615(d)(1) of the Tax Law.

3. On January 29, 1973, the Income Tax Bureau issued a Notice of Deficiency for additional personal income tax of \$1,057.67 for 1969, whereby:

- (a) miscellaneous deductions of \$13,450.00 were disallowed as unsubstantiated, which included a casualty loss of \$12,500.00, and
- (b) a correction was made increasing the amount of New York tax withheld from \$1,403.37 to \$1,413.37.

4. During the small claims hearing held on August 31, 1977, the Income Tax Bureau (in accordance with section 689(d)(1) of the Tax Law) determined a greater total deficiency than that asserted in the notices of deficiency issued April 10, 1972 and January 29, 1973. This determination was based on a Federal audit report dated November 19, 1973 from the Appellate Division of the Internal Revenue

Service. Accordingly, the deficiencies were recomputed by the Income Tax Bureau as follows:

<u>Adjustments</u>	<u>1968</u>	<u>1969</u>
Schedule D Loss	\$29,093.87	-0-
Casualty Loss	-0-	\$12,500.00
Employee Business Expenses	1,813.91	1,412.63
Moving Expense	-0-	350.00
Automobile Expense	619.59	726.39
Medical Expenses	446.44	74.63
Total Adjustments	<u>\$31,973.81</u>	<u>\$15,063.65</u>
New York State Taxable Income Reported	<u>(9,009.89)</u>	<u>5,136.05</u>
Corrected New York State Taxable Income	<u>22,963.92</u>	<u>20,199.70</u>
Additional Personal Income Tax Due	<u>1,750.31</u>	<u>1,257.16</u>

5. Petitioner Arthur T. Davidson asserted that his apartment building in Connecticut was subjected to a foreclosure sale, which resulted in a net operating loss and a carryover loss for 1968. However, no evidence was submitted to establish petitioner's contentions.

6. Petitioner Arthur T. Davidson asserted that he and his wife petitioner Ezeria W. Davidson sustained a casualty loss in 1969 from damages on their house resulting from vandalism. Petitioners filed a claim for damages with their insurance company in 1969, which claim was denied. Consequently, suit was filed against the insurance company, which petitioner asserted was resolved in 1975.

7. Petitioner Arthur T. Davidson indicated that he wished to increase the casualty loss claimed for 1969 by eight to ten thousand dollars. He contended that this amount represented damages to the basement of his home and that said loss was not included in the original casualty loss computation.

8. A statement from the Dunn-Rite Construction Company dated May 5, 1970 was submitted entitled, "Appraisal of Water and Freezing Damages at the above address," which estimated the cost of repairs at \$11,349.49. No other evidence regarding the casualty loss was submitted.

9. Petitioners argued that the casualty loss was deductible in the year in which it occurred, regardless of the claim pending against the insurance company. This argument was rejected by the Internal Revenue Service and subsequently by the United States Tax Court (Arthur T. Davidson and Ezeria W. Davidson v. Commissioner, Docket No. 1816-74. T. C. Memo. 1975-233. Filed July 11, 1975)

#### CONCLUSIONS OF LAW

A. That petitioners, Arthur T. and Ezeria W. Davidson, have failed to sustain the burden of proof required (in accordance with section 689(e) of the Tax Law) to establish that they were entitled to a carryover loss for 1968 and to a casualty loss for 1969.

B. That the Income Tax Bureau is hereby directed to modify and recompute the notices of deficiency issued April 10, 1972 and January 29, 1973 in accordance with Finding of Fact "4", above.

C. That the petition of Arthur T. and Ezeria W. Davidson is denied.

DATED: Albany, New York  
January 24, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER