

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

October 9, 1979

Edward & Kathleen H. Ford
1124 James Court
Baldwin, NY 11510

Dear Dr. & Mrs. Ford:

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sondra Harris
Hofstra Law School
Hempstead, NY 11550
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Edward & Kathleen H. Ford :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1971. :

State of New York
County of Albany

Jay Vredenburg, 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 9th day of October, 1979, he served the within notice of Decision by certified mail upon Edward & Kathleen H. Ford, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward & Kathleen H. Ford
1124 James Court
Baldwin, NY 11510

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of October, 1979.

Marcy Donnini

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Edward & Kathleen H. Ford :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1971. :

State of New York

County of Albany

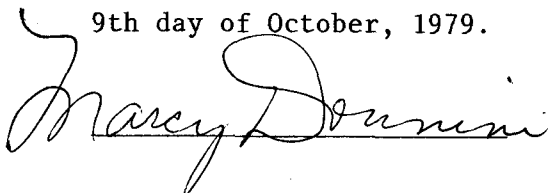
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Sondra Harris the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

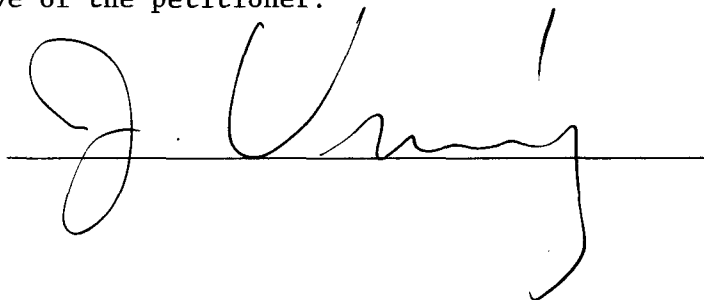
Ms. Sondra Harris
Hofstra Law School
Hempstead, NY 11550

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
9th day of October, 1979.


Nancy Dominici



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Edward & Kathleen H. Ford :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1971. :

State of New York

County of Albany

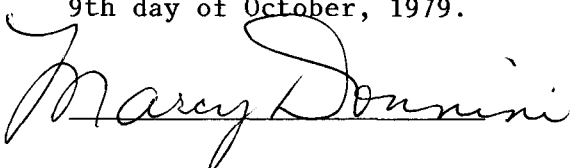
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Sondra Harris the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Sondra Harris
Hofstra Law School
Hempstead, NY 11550

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
9th day of October, 1979.


Mary Donnini


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| EDWARD FORD and KATHLEEN A. FORD | : | DECISION |
| | : | |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Year | : | |
| 1971. | : | |

Petitioners, Edward Ford and Kathleen A. Ford, 1124 James Court, Baldwin, New York 11510, 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. 13181).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 10, 1978 at 1:15 P.M. Petitioners appeared by Sondra R. Harris, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether the interest expense, real estate taxes and rental expenses claimed on petitioners' 1971 New York State income tax return or now claimed, are deductible and/or fully documented.

II. Whether the rental of petitioners' 2196 Dean Street property was entered into for profit, thereby allowing a rental loss for the years at issue.

FINDINGS OF FACT

1. Petitioners, Edward Ford and Kathleen A. Ford, filed a New York State resident income tax return for 1971.

2. As a result of an audit, the Income Tax Bureau issued a Statement of

Audit Changes to petitioners on June 24, 1974 making the following adjustments:

| <u>Item</u> | <u>Claimed</u> | <u>Allowed</u> | <u>Adjustment</u> |
|---|----------------|----------------|-------------------|
| Rental Gain (Loss) on 2196 Dean St. | (\$1,889.00) | \$ -0- | \$1,899.00 |
| Rental Gain(Loss) on 215-16 110 Hollis Ave. | 73.23 | (1,942.92) | (2,016.15) |
| Adjustment to Income | | | (127.15) |
| Adjustment to Itemized Deductions | | | |
| Real Estate Taxes | 3,684.76 | 2,330.64 | 1,354.12 |
| Interest on Mortgage | 4,757.55 | 2,155.84 | 2,601.71 |
| Interest on Installment Purchases | 855.00 | 522.00 | <u>333.00</u> |
| Increase to New York Taxable Income Per Audit | | | <u>\$4,161.68</u> |

Accordingly, a Notice of Deficiency was issued on October 29, 1974 asserting additional tax of \$410.70, plus interest of \$62.48, for a total of \$473.18.

3. Petitioners submitted cancelled check which they contended represented payments of principal and interest on second mortgages on the various properties they owned. Petitioners contended that they were entitled to an additional interest expense deduction; however, the amount of the interest expense is indeterminable. This interest expense was not originally claimed and no other evidence was submitted to verify the existence of the claimed second mortgages.

4. Petitioners reported rental receipts from the Hollis Avenue property of \$1,980.00 and claimed expenses of \$4,126.36, including depreciation. In connection with the Dean Street property, petitioners reported rental receipts of \$1,200.00 and originally claimed expenses of \$3,089.00.

5. The rental property at Dean Street was a two-family residence. The downstairs apartment was occupied by petitioner Edward Ford's brother, who did not pay rent. Petitioners rented the upstairs apartment to an unrelated individual at the rate of \$100.00 a month.

6. Petitioners had rental expenses attributed to the Dean Street property in the sum of \$3,072.00. They contended that a portion of the fuel and electrical

expenses attributable to the Hollis Avenue property was included in this amount; however, no evidence was presented to support this contention.

7. Petitioner submitted no evidence as to the fair rental value of the Dean Street property for the year at issue.

CONCLUSIONS OF LAW

A. That petitioners have failed to meet the substantiation requirements for the interest expense claimed on the second mortgages, in accordance with section 689(e) of the Tax Law.

B. That petitioners have sustained the burden of proof in establishing the rental expenses for the Hollis Avenue property to be \$4,126.36.

C. That petitioners have failed to sustain the burden of proof in establishing that the Dean Street property was rented with a profit motive; therefore, expenses attributable thereto cannot be deducted under sections 162 and 212 of the Internal Revenue Code.

That the rental expenses are allowed to the extent of the gross rental income, in accordance with the meaning and intent of section 183 of the Internal Revenue Code and section 1.183-1(b)(1) of the Treasury Regulations.

D. That the petition of Edward Ford and Kathleen A. Ford is granted to the extent set forth in Conclusions of Law "B" and "C". The Income Tax Bureau is directed to modify the adjustments in the Notice of Deficiency issued on October 29, 1974 as follows:

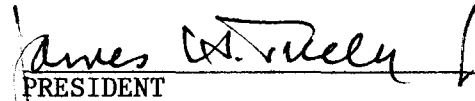
| <u>Item</u> | <u>Reported</u> | <u>Granted</u> | <u>Adjustment</u> |
|---|-----------------|----------------|--------------------------|
| Rental Gain (Loss) on 2196 Dean St. | (\$1,889.00) | \$ -0- | \$1,889.00 |
| Rental Gain(Loss) on 215-16 110 Hollis Ave. | 73.22 | (2,146.36) | (2,219.59) |
| Real Estate Taxes | 3,684.76 | 2,330.64 | 1,354.12 |
| Interest on Mortgage | 4,757.55 | 2,155.84 | 2,601.71 |
| Interest on Installment Purchases | 855.00 | 522.00 | <u>333.00</u> |
| Increase to New York Taxable Income | | | <u><u>\$3,958.24</u></u> |

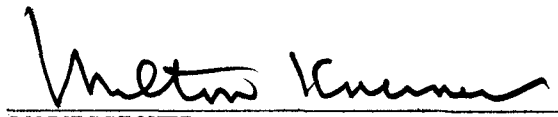
Except as so granted, however, the petition is in all other respects denied.

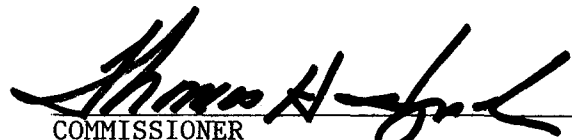
DATED: Albany, New York

STATE TAX COMMISSION

OCT 9 1979


PRESIDENT


COMMISSIONER


COMMISSIONER