

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
James A. & R. Judy Keller :
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 1973. :

State of New York
County of Albany

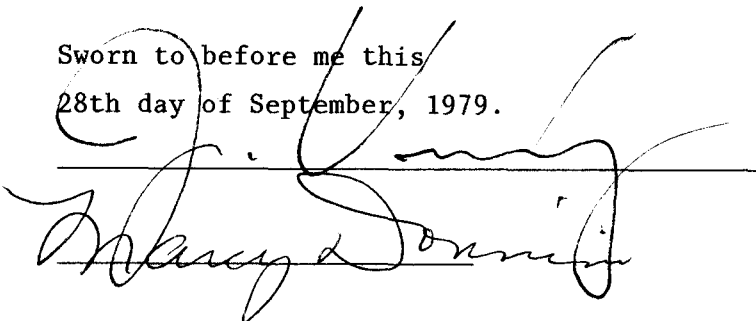
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon James A. & R. Judy Keller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James A. & R. Judy Keller
2 Timothy Ct.
Monsey, NY 10952

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
28th day of September, 1979.


Nancy J. Donnell



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

James A. & R. Judy Keller
2 Timothy Ct.
Monsey, NY 10952

Dear Mr. & Mrs. Keller:

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 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,

A handwritten signature in cursive script, appearing to read 'John J. Sollecito', written in dark ink.

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES A. KELLER and R. JUDY KELLER : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1973.

Petitioners, James A. Keller and R. Judy Keller, 2 Timothy Court, Monsey, New York 10952, 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 1973 (File No. 12158).

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 25, 1978 at 9:15 A.M. Petitioner R. Judy Keller appeared pro se and for her husband, petitioner James A. Keller. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioners properly deducted a casualty loss which resulted from the theft of a television set from their home during 1973.

II. Whether the statute of limitations has expired because the Income Tax Bureau allegedly failed to vigorously pursue the case to a speedy conclusion.

III. Whether Article 22 of the Tax Law is unconstitutional with respect to its conformity to section 165 of the Internal Revenue Code.

FINDINGS OF FACT

1. Petitioners, James A. and R. Judy Keller, timely filed a New York State Combined Income Tax Return for 1973, on which they claimed a casualty loss deduction for the value of a television set which was stolen from their home.

2. The Income Tax Bureau disallowed the casualty loss, on the grounds that petitioners failed to apply for reimbursement from their insurance company. Accordingly, the bureau issued a Notice of Deficiency against them for 1973 on September 29, 1975, for \$32.04 in personal income tax, plus \$3.50 in interest, for a total due of \$35.54.

3. The Income Tax Bureau made other adjustments to petitioners' tax return. It also changed their filing status from separate to the more beneficial joint status, since this would produce the lowest tax. Petitioners conceded the correctness of the other adjustments and the change in filing status.

4. A newly-purchased television set with a value of \$290.33 was stolen from petitioners' home on September 5, 1973. The loss of the television set was covered by insurance. Petitioners did not submit a claim for the loss to their insurance carrier until late 1974 or early 1975. On January 25, 1975, the insurance carrier rejected the claim on the grounds that petitioners' claim was not timely filed under the provision of their policy.

5. Petitioners contended that the Income Tax Bureau did not actively pursue this matter from the date of the Notice of Deficiency; therefore, they argued that the statute of limitations had expired.

6. Petitioners contended that the Income Tax Bureau's treatment of insured and uninsured taxpayers is inconsistent and, therefore,

is unconstitutional.

CONCLUSIONS OF LAW

A. That petitioners, James A. and R. Judy Keller, did not properly deduct the loss which resulted from the theft of a television set. The Income Tax Bureau properly disallowed said loss for 1973, in accordance with the meaning and intent of section 165 of the Internal Revenue Code. Broderick v. Anderson 38-1 USTC Par. 9263, 23 F. Supp. 488; James Hallis and Juanita Hallis v. Commissioner, T.C. Memo 1978-450.

B. That the Notice of Deficiency was issued within the three years required by the statute of limitations (section 683 of the Tax Law). There is no section of the Tax Law which sets limitations on processing time between the date of the issuance of the Notice of Deficiency and the scheduling of a hearing by the State Tax Commission.

C. That the constitutionality of the laws of the State of New York are presumed at the administrative level of and by the State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional; therefore, it must be presumed that Article 22 as it is applied in conformity with section 165 of the Internal Revenue Code, is constitutional to the extent that it relates to the imposition of an income tax liability on petitioners.

D. That the petition of James A. and R. Judy Keller is denied and the Notice of Deficiency issued September 29, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER