

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD LIGHTER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (a) 22 of the :
Tax Law for the Year (XXXXXX) 1973 :

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 24th day of January , 19 79, He served the within
Notice of Decision by (certified) mail upon Leonard Lighter

~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leonard Lighter
3821 Lyme Avenue
Brooklyn, New York 11224

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 ~~XXXXXXXXXXXXXXXXXXXX~~
~~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 , 19 79.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD LIGHTER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(a)~~ 22 of the :
Tax Law for the Year ~~(a)XXXXXXX(a)~~ 1973. :

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 24th day of January , 19 79, ~~he~~ served the within

Notice of Decision by (certified) mail upon Myron P. Berman, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Myron P. Berman, Esq.
c/o Berman & Sessler
Empire State Building
New York, New York 10001

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

24th day of January , 1979.

Marilyn J. Papineau

John Huhn



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

January 24, 1979

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

Leonard Lighter
3821 Lyme Avenue
Brooklyn, New York 11224

Dear Mr. Lighter:

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 ~~XX~~ **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 CHYRYWATY
HEARING EXAMINER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEONARD LIGHTER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	
	:	

Petitioner, Leonard Lighter, 3821 Lyme Avenue, Brooklyn, New York 11224, 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. 10820).

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 November 16, 1977 at 10:45 A.M. Petitioner appeared by Myron P. Berman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner properly deducted charitable contributions of \$1,400.00 and a rental loss of \$2,936.00 for 1973.

FINDINGS OF FACT

1. Petitioner, Leonard Lighter, filed a separate New York State income tax resident return for 1973.

2. The Income Tax Bureau issued a Statement of Audit Changes to petitioner on April 2, 1975, noting adjustments as follows:

<u>ITEM</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>ADJUSTMENT</u>
Rental Loss	\$2,936.00	\$ -0-	\$2,936.00
Contributions	1,400.00	78.00	1,322.00
Sales Tax	422.00	243.00	179.00
Total Adjustment			<u>\$4,437.00</u>

Accordingly, a Notice of Deficiency in the amount of \$232.94, plus interest, was issued on October 27, 1975.

3. The adjustment to the sales tax deduction was conceded by the petitioner and is not at issue.

4. Petitioner, Leonard Lighter, and his wife, Helene Lighter, purchased a three-family house on June 1, 1971, for the stated purpose of renting two units to help "offset the carrying costs" of the property. The third unit was used by petitioner and his family as their personal residence.

5. Petitioner contended that he rented the units to unrelated individuals, at the rate of \$121.35 for the three-room apartment and \$143.75 for the four and one-half room apartment, and that these rates were increased by fifteen percent on July 1, 1973.

6. Although \$6,305.00 in rental expenses was attributed to the rental units, these rental expenses included the following non-decreasing fixed charges for 1973:

Real Estate Taxes	\$1,843.00
Sea Gate Fees	1,000.00
Mortgage Interest	1,162.00
Insurance	238.00
Water and Sewer Taxes	276.00
Heating Costs	1,244.00
Total Fixed Charges	<u>\$5,763.00</u>

Two-thirds of the fixed charges (\$3,826.00) were attributable to the rental units and the rental income reported for 1973 was \$3,369.00.

7. No evidence was submitted as to the fair rental value of the rental units at issue.

8. Petitioner, Leonard Lighter, submitted statements from two organizations certifying that contributions were made during 1973 in the sums of \$1,200.00 and \$540.10. Petitioner's wife, Helene Lighter, deducted \$400.00 in charitable contributions on her own separate tax return for 1973.

CONCLUSIONS OF LAW

A. That petitioner, Leonard Lighter, has failed to sustain the burden of proof necessary to establish that the property was rented with a profit motive; accordingly, expenses attributable thereto cannot be deducted under sections 162 and 212 of the Internal Revenue Code and Article 22 of the Tax Law.

B. That the rental expenses are allowed to the extent of the gross rental income attributable to petitioner on his separate tax return, in accordance with the meaning and intent of section 183 of the Internal Revenue Code, section 1.183-1(b)(1) of the United States Treasury Regulations and Article 22 of the Tax Law.

C. That petitioner, Leonard Lighter, has sustained the burden of proof necessary to establish charitable contributions in the sum of \$1,340.10, in accordance with the meaning and intent of section 170 of the Internal Revenue Code and Article 22 of the Tax Law.

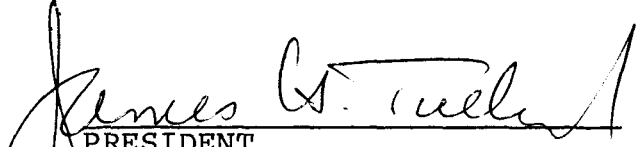
D. That the petition of Leonard Lighter is granted to the extent indicated in Conclusions of Law "B" and "C" of this decision:

<u>ITEM</u>	<u>REPORTED</u>	<u>GRANTED</u>	<u>ADJUSTMENT</u>
Rental Loss	(\$2,936.00)	\$ -0-	\$2,936.00
Contributions	1,400.00	1,340.10	59.90
Sales Tax	422.00	243.00	179.00
Total Adjustment			<u>\$3,174.90</u>

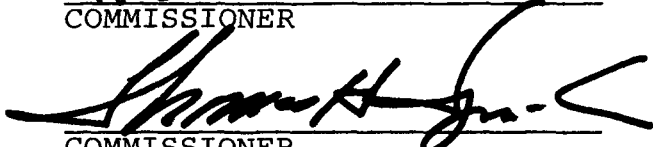
E. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued October 27, 1975; that the modified tax is due, together with such interest as may be lawfully owing and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER