

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

October 9, 1979

Constance Mandina
14-33 164th St.
Beechurst, NY 11357

Dear Ms. Mandina:

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
Randy B. Blaustein
Siegel & Mendlowitz, P.C.
251 W. 57th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Constance Mandina :

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 1972. :

State of New York

County of Albany

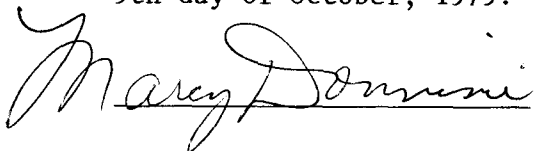
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Constance Mandina, the petitioner in the within proceeding,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

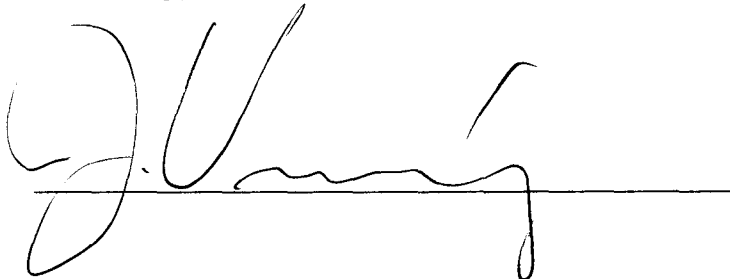
Constance Mandina
14-33 164th St.
Beechurst, NY 11357

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.


Mary Domini



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Constance Mandina :

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 1972. :

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 Randy B. Blaustein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

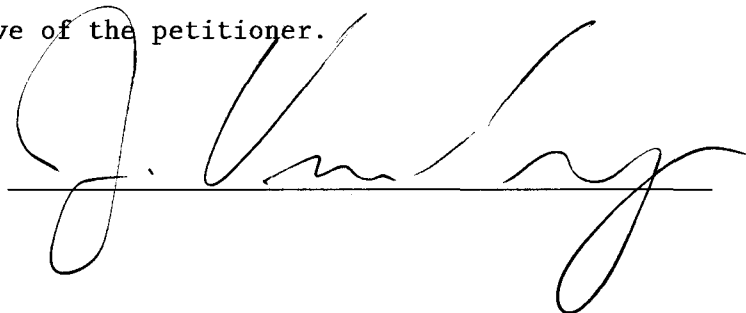
Mr. Randy B. Blaustein
Siegel & Mendlowitz, P.C.
251 W. 57th St.
New York, NY 10019

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 D. Driscoll


Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CONSTANCE MANDINA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972	:	

Petitioner, Constance Mandina, 14-33 164th Street, Beechhurst, New York 11357, 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 1972 (File No. 11745).

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 October 31, 1978 at 9:15 A.M. Petitioner appeared by Randy B. Blaustein. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether casualty losses, miscellaneous expenses and capital losses were properly deducted on petitioner's New York State income tax resident return for 1972.

FINDINGS OF FACT

1. Petitioner, Constance Mandina, timely filed a New York State Income Tax Resident Return for 1972, on which she claimed a casualty loss of \$450.00, miscellaneous expenses of \$2,993.32, and a capital loss of \$1,000.00.

2. On audit, the Income Tax Bureau issued a Notice of Deficiency dated November 24, 1975, along with an explanatory Statement of Audit Changes, on which the casualty loss was reduced to \$50.00, the miscellaneous expenses were reduced to \$441.75, and the capital loss was disallowed in full. In addition, since the remaining New York itemized deductions were less than the New York standard deduction, the New York standard deduction was allowed in lieu of the New York itemized deductions claimed.

3. On May 19, 1972, petitioner's automobile, a 1971 Pontiac-Firebird, was stolen. This theft was reported to the New York City Police Department and to petitioner's automobile insurance company. Petitioner received \$2,850.00 from the insurance company, as reimbursement for the theft of the automobile. An affidavit made by petitioner's mechanic was submitted estimating the value of petitioner's automobile at \$3,400.00 at the time of the theft.

4. Petitioner was employed as law secretary to a Justice of the Supreme Court, State of New York. In that capacity, it was contended that she incurred \$530.65 in entertainment expenses, \$684.00 in automobile expenses and \$1,336.92 for maintenance of a home office. Neither a diary, receipts, or other documentary evidence were submitted in support of the aforementioned expenses.

5. On her return, petitioner claimed a non-business bad debt as a short-term capital loss of \$3,080.00, which was limited to \$1,000.00. However, petitioner's representative changed the classification of this item to an ordinary loss in accordance with section 1244 of the Internal Revenue Code.

6. Petitioner was a stockholder and corporate officer of 25th Century Productions, Inc., a corporation organized under the laws of the State of Georgia. It was contended that said corporation was organized in compliance with section 1244 of the Internal Revenue Code.

7. The president of 25th Century Productions, Inc. was stationed in Georgia for the purpose of organizing and staging Rock Music shows. Petitioner forwarded a total of \$3,080.00 to the corporation as financial support for the first show, which was held on December 26, 1971.

8. Petitioner contended that the president of 25th Century Productions, Inc. absconded with the proceeds of their first Rock Music show, and that Federal tax returns on behalf of the corporation were never filed due to a total lack of books and records, which had disappeared with him. It also contended that perhaps petitioner along with the other shareholders were victims of a "con game."

CONCLUSIONS OF LAW

A. That petitioner, Constance Mandina, sustained an automobile theft loss of \$550.00 (before the \$100.00 limitation), in accordance with the meaning and intent of section 165 of the Internal Revenue Code and Article 22 of the Tax Law.

B. That petitioner has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law, which requires her to establish that she incurred deductible expenses in the sum of \$530.65 for entertainment, \$684.00 in automobile expenses and \$1,336.92 for maintenance of a home office, or that she incurred a long term capital loss or a section 1244 (of the Internal Revenue Code) loss of \$3,080.00.

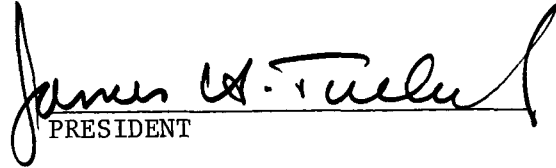
C. That although the petition of Constance Mandina is granted to the extent that a casualty loss of \$450.00 is allowed for the automobile theft, the allowable New York itemized deductions are less than the New York standard deduction; therefore, the New York standard deduction is being allowed in lieu of the allowable New York itemized deductions.

D. That the petition of Constance Mandina is denied and the Notice of Deficiency issued on November 24, 1975 is sustained.

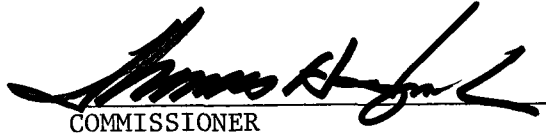
DATED: Albany, New York

STATE TAX COMMISSION

OCT 9 1979


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO... Mr. Coburn.....

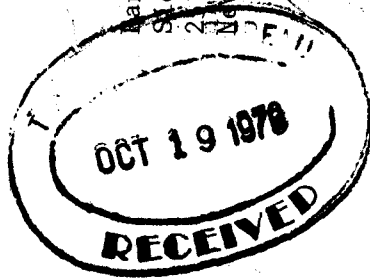
No better address. Please file.

10/22/79

Joseph Chyrywaty

TA-26 (4-76) 25M

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



Nandy B. Blaustein
Siegel & Mendlowitz, P.C.
211 W. 57th St.
New York, NY 10019

*Meredith
forwardable
10-11-79
H*

Smll Am.

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

October 9, 1979

Constance Mandina
14-33 164th St.
Beechurst, NY 11357

Dear Ms. Mandina:

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
Randy B. Blaustein
Siegel & Mendlowitz, P.C.
251 W. 57th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CONSTANCE MANDINA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972	:	

Petitioner, Constance Mandina, 14-33 164th Street, Beechhurst, New York 11357, 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 1972 (File No. 11745).

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 October 31, 1978 at 9:15 A.M. Petitioner appeared by Randy B. Blaustein. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether casualty losses, miscellaneous expenses and capital losses were properly deducted on petitioner's New York State income tax resident return for 1972.

FINDINGS OF FACT

1. Petitioner, Constance Mandina, timely filed a New York State Income Tax Resident Return for 1972, on which she claimed a casualty loss of \$450.00, miscellaneous expenses of \$2,993.32, and a capital loss of \$1,000.00.

2. On audit, the Income Tax Bureau issued a Notice of Deficiency dated November 24, 1975, along with an explanatory Statement of Audit Changes, on which the casualty loss was reduced to \$50.00, the miscellaneous expenses were reduced to \$441.75, and the capital loss was disallowed in full. In addition, since the remaining New York itemized deductions were less than the New York standard deduction, the New York standard deduction was allowed in lieu of the New York itemized deductions claimed.

3. On May 19, 1972, petitioner's automobile, a 1971 Pontiac-Firebird, was stolen. This theft was reported to the New York City Police Department and to petitioner's automobile insurance company. Petitioner received \$2,850.00 from the insurance company, as reimbursement for the theft of the automobile. An affidavit made by petitioner's mechanic was submitted estimating the value of petitioner's automobile at \$3,400.00 at the time of the theft.

4. Petitioner was employed as law secretary to a Justice of the Supreme Court, State of New York. In that capacity, it was contended that she incurred \$530.65 in entertainment expenses, \$684.00 in automobile expenses and \$1,336.92 for maintenance of a home office. Neither a diary, receipts, or other documentary evidence were submitted in support of the aforementioned expenses.

5. On her return, petitioner claimed a non-business bad debt as a short-term capital loss of \$3,080.00, which was limited to \$1,000.00. However, petitioner's representative changed the classification of this item to an ordinary loss in accordance with section 1244 of the Internal Revenue Code.

6. Petitioner was a stockholder and corporate officer of 25th Century Productions, Inc., a corporation organized under the laws of the State of Georgia. It was contended that said corporation was organized in compliance with section 1244 of the Internal Revenue Code.

7. The president of 25th Century Productions, Inc. was stationed in Georgia for the purpose of organizing and staging Rock Music shows. Petitioner forwarded a total of \$3,080.00 to the corporation as financial support for the first show, which was held on December 26, 1971.

8. Petitioner contended that the president of 25th Century Productions, Inc. absconded with the proceeds of their first Rock Music show, and that Federal tax returns on behalf of the corporation were never filed due to a total lack of books and records, which had disappeared with him. It also contended that perhaps petitioner along with the other shareholders were victims of a "con game."

CONCLUSIONS OF LAW

A. That petitioner, Constance Mandina, sustained an automobile theft loss of \$550.00 (before the \$100.00 limitation), in accordance with the meaning and intent of section 165 of the Internal Revenue Code and Article 22 of the Tax Law.

B. That petitioner has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law, which requires her to establish that she incurred deductible expenses in the sum of \$530.65 for entertainment, \$684.00 in automobile expenses and \$1,336.92 for maintenance of a home office, or that she incurred a long term capital loss or a section 1244 (of the Internal Revenue Code) loss of \$3,080.00.

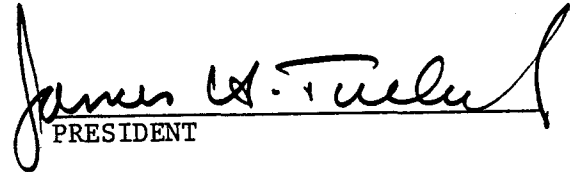
C. That although the petition of Constance Mandina is granted to the extent that a casualty loss of \$450.00 is allowed for the automobile theft, the allowable New York itemized deductions are less than the New York standard deduction; therefore, the New York standard deduction is being allowed in lieu of the allowable New York itemized deductions.

D. That the petition of Constance Mandina is denied and the Notice of Deficiency issued on November 24, 1975 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 9 1979


PRESIDENT


COMMISSIONER


COMMISSIONER