

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

George P. & Michelle Pulver :

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

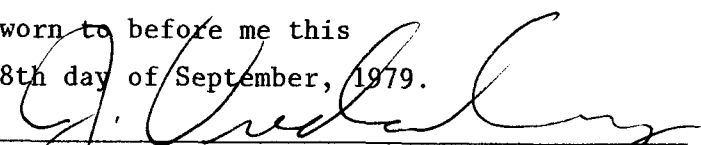
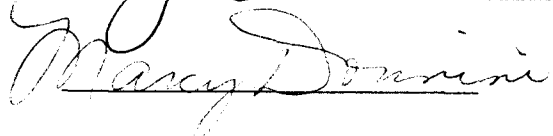
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon George P. & Michelle Pulver, the petitioner in the within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

George P. & Michelle Pulver
Woodland Ave.
Catskill, NY 12414

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.

STATE OF NEW YORK
STATE TAX COMMISSION

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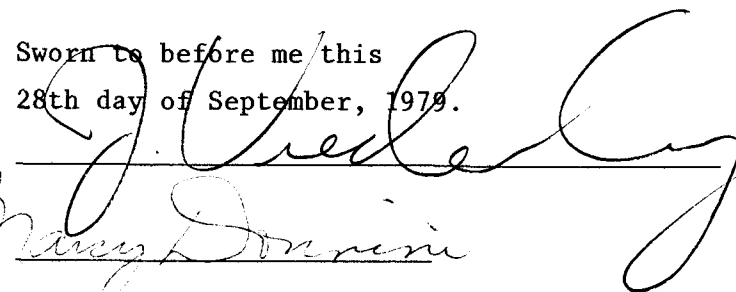
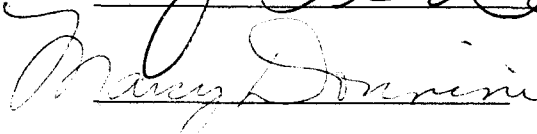
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Frank C. Matera the representative of the petitioner in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

Mr. Frank C. Matera
285 Main St.
Catskill, NY 12414

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
28th day of September, 1979.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

George P. & Michelle Pulver
Woodland Ave.
Catskill, NY 12414

Dear Mr. & Mrs. Pulver:

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,



cc: Petitioner's Representative
Frank C. Matera
285 Main St.
Catskill, NY 12414
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

GEORGE P. PULVER and MICHELE B. PULVER :

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, George P. Pulver and Michele B. Pulver, Woodland Avenue, Catskill, New York 12414, 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. 14837).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 18, 1978 at 9:15 A.M. Petitioners appeared by Frank C. Matera, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of Counsel).

ISSUE

Whether petitioners were entitled to deduct a casualty loss arising from the flooding of their real property.

FINDINGS OF FACT

1. Petitioners, George P. Pulver and Michele B. Pulver, timely filed a joint New York State income tax resident return for 1973, on which they claimed a casualty loss deduction of \$6,900.00.

2. On February 24, 1976, the Income Tax Bureau issued a Statement of Audit Changes to petitioners, disallowing \$3,500.00 of said loss. This was done on the grounds that the casualty loss was limited to the decrease in

value of the property as a result of the casualty, and that the estimated cost of constructing an improvement (retaining wall) could not be considered in computing the decrease in value. Accordingly, the Bureau issued a Notice of Deficiency against petitioners on February 24, 1976 for \$520.26 in personal income tax, plus \$72.69 in interest, for a total due of \$592.95.

3. Petitioners contended that they met the requirements provided in section 165 of the Internal Revenue Code and, therefore, were entitled to claim the casualty loss. They substantiated that they owned the property and that there was a casualty loss, and submitted an appraisal made by a qualified appraiser which showed the loss in value of the property as a result of the casualty.

4. On December 20 and 21, 1973, torrential rains over a twenty-four hour period, plus melting snow, caused damage to the property on which petitioners' house was situated. The house itself was not damaged. There was no insurance coverage for the loss.

5. Petitioners' property bordered on a wide stream which overflowed, washing away several feet of frontage and causing an earth slide. It damaged trees, topsoil and/or land, part of a stone driveway, some wood lawn steps and a retaining wall. No satisfactory evidence regarding the retaining wall was submitted by petitioners.

6. An appraisal was made to establish the fair market value of the property immediately before and after the casualty. The appraiser determined a decrease in value of property of approximately \$8,000.00. The "Addendum to Appraisal of Real Property" stated that the computation in the appraisal was partially based on a "cost of cure" method of appraisal, which computation was about the same as under a "Market Value Approach" method. The cost of cure method included the estimated cost of building a retaining wall at a specified

location in order to prevent future earth slides. The Income Tax Bureau allowed the entire claimed casualty loss, except for the estimated cost of building the retaining wall. The retaining wall called for in the appraisal was never constructed.

CONCLUSIONS OF LAW

A. That the portion of the casualty loss deduction claimed by petitioners, George P. Pulver and Michele B. Pulver, which constituted the estimated cost of constructing a retaining wall, was a nondeductible improvement to their property and did not constitute a casualty loss, in accordance with section 165(c)(3) of the Internal Revenue Code.

B. That the petition of George P. Pulver and Michele B. Pulver is denied and the Notice of Deficiency issued on February 24, 1976 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