

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Joseph & Ann Sia :

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 1970. :

State of New York

County of Albany

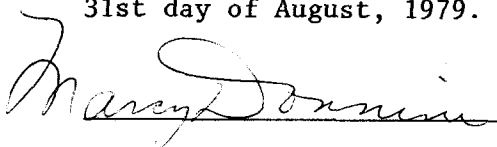
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Joseph & Ann Sia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Joseph & Ann Sia
4 Thanksgiving Ln.
Clifton, NJ

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
31st day of August, 1979.


Nancy D. [unclear]


Jay Vredenburg



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

August 31, 1979

Joseph & Ann Sia
4 Thanksgiving Ln.
Clifton, NJ

Dear Mr. & Mrs. Sia:

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".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 21, 1977 at 2:45 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioners' failure to report the proceeds of a condemnation award on their 1970 New York State income tax resident return was improper.

II. Whether the Notice of Deficiency issued on August 26, 1974 against petitioners for 1970 was timely, pursuant to section 683 of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Joseph Sia and Ann Sia, filed a joint New York State Income Tax Resident Return (Form IT-201) for the calendar year 1970 on April 25, 1972.

2. On September 25, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, asserting additional personal income tax due for 1970. This was done on the grounds that they failed to report a gain on a condemnation award received in 1970. The computations considered an award of \$36,000.00 taxable as a long-term capital gain, with no amount allowed for cost basis. In addition, interest of \$2,004.00 received in connection with the award was included as ordinary income and penalty was asserted pursuant to section 685(a)(1) of the Tax Law. Accordingly, the Income Tax Bureau issued a Notice of Deficiency to petitioners on August 26, 1974.

3. Petitioners contended that the proceeds from the condemnation award were not taxable, as said proceeds were reinvested in replacement property. In their petition, Mr. and Mrs. Sia conceded that the interest received on the condemnation award was includable in income.

4. Joseph Sia and Ann Sia purchased a building located at 1131 Yonkers Avenue, Yonkers, New York, in 1961. One quarter of the building was used as their personal residence and the balance as rental property. The State of New York took title to the entire property and demolished the building so that a roadway could be

widened. Title to the remaining property was subsequently reinstated to petitioners.

5. Petitioners contended that the condemnation was effective November 21, 1968, and that the final award was not resolved until October of 1971. Petitioner received payments as follows:

July of 1970	Part of Award	\$36,000.00
	Interest	2,004.00
October of 1971	Balance of Award	12,000.00
	Interest	568.00
Total Received		<u>\$50,572.00</u>

6. The adjusted cost basis of the condemned property is computed as follows:

Cost of building purchased in 1961	\$33,575.60
Add improvements in 1965	1,790.99
	<u>\$35,366.59</u>
Used as rental property (1/4 personal)	
Depreciation on business portion	
1961 - 12/31/68	5,185.56
Adjusted cost basis at 12/31/68	<u>\$30,181.03</u>

The building was not available for rental purposes during 1969

7. On February 26, 1973, petitioners entered into a contract with A. Ciampi Co., Inc., general contractors, for replacement of the demolished building at 1131 Yonkers Avenue, Yonkers, New York.

The City of Yonkers issued a Certificate of Occupancy for the rebuilt property at said address on September 13, 1973.

8. Petitioners requested relief from the section 685(a)(1) penalty for not reporting the long-term capital gain, as they relied on the statements of the expert representative of the Real Estate Department of the City of Yonkers, who told them that they could replace the property without any income tax consequences, but failed to clearly inform petitioners of the time requirements for non-recognition of gain in an involuntary conversion.

9. Petitioners did not show that they applied to the Internal Revenue Service for an extension of the period within which to reinvest the proceeds from the condemnation award.

CONCLUSIONS OF LAW

A. That petitioners, Joseph Sia and Ann Sia, did not replace the converted property within two years after the close of the first year in which any part of the gain was realized (1970); that the gain on the condemnation award received in 1970 should have been reported on the 1970 income tax return, or on a subsequent amended 1970 return, as a taxable long-term capital gain transaction, in accordance with the meaning and intent of sections 451, 1033, and 1231 of the Internal Revenue Code, as well as Article 22 of the Tax Law. Amounts received by petitioners in 1971, however, are not includable in petitioners' income for 1970. (The period of time in which petitioners could have replaced the converted property might have been extended, if petitioners had made application to the Internal Revenue Service for an extension pursuant to Treas. Reg. Sec. 1.1033(a) - 2(c)(3).)

B. That the Notice of Deficiency issued on August 26, 1974 against petitioners for 1970 was timely, in accordance with the meaning and intent of section 683 of the Tax Law.

C. That petitioners' 1970 New York State resident return was not filed within the time prescribed by section 651(a) of the Tax Law. Petitioners have failed to show that they had reasonable cause for not filing same within the prescribed time. Accordingly,

the Income Tax Bureau properly asserted a penalty pursuant to section 685(a)(1) of the Tax Law and, therefore, said penalty is sustained.

D. That the petition of Joseph Sia and Ann Sia is granted to the extent of modifying the Notice of Deficiency issued August 26, 1974 by reducing the corrected New York taxable income from \$27,774.00 to \$12,683.49, based on the following:

Condemnation Award (Received in 1970)	\$36,000.00
Less Adjusted Basis of Property	30,181.03
Gain	<u>\$ 5,818.97</u>
Net Long Term Capital Gain (50%)	\$ 2,909.49
Interest on Award	2,004.00
Taxable Income Reported on Return	7,770.00
Corrected New York Taxable Income	<u>\$12,683.49</u>

E. That the petition of Joseph Sia and Ann Sia is granted to the extent provided in Conclusion of Law "D", supra; however, except as so granted, the petition is in all other respects denied and the Notice of Deficiency, as modified, is sustained.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER