

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Richard F. Vulpi :  
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. :

AFFIDAVIT OF MAILING

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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Richard F. Vulpi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard F. Vulpi  
310 E. 75th St., #2L  
New York, NY 10021

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  
26th day of November, 1979.

Joanne Knapp

Jay Vredenburg

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

November 26, 1979

Richard F. Vulpi  
310 E. 75th St., #2L  
New York, NY 10021

Dear Mr. Vulpi:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
RICHARD F. VULPI	:	DECISION
for Redetermination of a Deficiency or for Refund	:	
of Personal Income Tax under Article 22 of the	:	
Tax Law for the Year 1972.	:	

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Petitioner, Richard F. Vulpi, 310 East 75th Street #2L, New York, New York 10021, 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. 13445).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 6, 1979 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

#### ISSUE

Whether a ski house was held for the production of income or for use in a trade or business, thereby entitling the petitioner to a deduction for rental expense in excess of rental receipts.

#### FINDINGS OF FACT

1. Petitioner, Richard F. Vulpi, filed a New York State Income Tax Resident Return for 1970. On this return, he claimed a rental loss of \$5,578.00.

2. On March 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner on the grounds that petitioner did not establish that certain property was held for the production of income for use in a trade or business; therefore, the loss claimed on the petitioner's tax return was not deductible. Expenses on the property were allowed up to the amount of income. On July 29, 1974, the Income Tax Bureau issued a Notice of Deficiency for \$680.85 in personal income tax, plus interest of \$65.75, for a total due of \$746.60.

3. In the fall of 1971, the petitioner purchased a four bedroom house in Hunter, New York. The third floor of the house was unfinished. During the negotiations the petitioner told the seller his intention was to use the house as a business, a ski house in the winter and a rental house during the summer. The petitioner finished the third floor by building four additional bedrooms and a bathroom in the attic. In the eight bedrooms, the petitioner installed bunk beds so that the house could sleep a total of twenty-two people.

4. Petitioner placed advertisements in the Village Voice for the purpose of renting his Hunter, New York ski house. A tenant was charged a rental fee of \$200.00 which entitled him to a bed on alternate weekends during the ski season as well as additional use of the house during the week if so desired. This gave the petitioner a potential of approximately \$8,000.00 in gross rents during the ski season.

5. During the 1971-1972 ski season the Hunter, New York area had very little snowfall causing the ski operators in that area to have a poor season.

6. From November 1, 1971 through December 1972 and after, petitioner employed Home Maintenance Service for the purpose of caretaking and maintaining the ski house.

7. From May 1972 to September 1972, petitioner's real estate agent rented the house for the summer for \$1,000.00.

8. The ski house owned by the petitioner was registered as rental property and the fire insurance and liability policies reflected that fact.

9. Petitioner did not use the ski house as a personal residence.

CONCLUSIONS OF LAW

A. That the petitioner, Richard F. Vulpi, has established that the property was held for the production of income; therefore, the expenses are deductible under section 62(5) of the Internal Revenue Code and Article 22 of the Tax Law.

B. That the petition of Richard F. Vulpi is granted and the Notice of Deficiency issued July 29, 1974 is cancelled.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER