

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dominick & Agatha Battaglia :
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. :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Dominick & Agatha Battaglia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dominick & Agatha Battaglia
23 Moeller St.
Hicksville, NY 11801

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 November, 1980.

Ester A. Bank

J. Vredenburg

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

November 28, 1980

Dominick & Agatha Battaglia
23 Moeller St.
Hicksville, NY 11801

Dear Mr. & Mrs. Battaglia:

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

In the Matter of the Petition :
:
of :
DOMINICK BATTAGLIA and AGATHA BATTAGLIA : 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, Dominick Battaglia and Agatha Battaglia, 23 Moeller Street, Hicksville, New York 11801, 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. 15747).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 22, 1980 at 1:15 P.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners, for subject year, incurred a casualty loss to their personal residence as a result of deterioration of plumbing pipes.

FINDINGS OF FACT

1. Petitioners, Dominick Battaglia and Agatha Battaglia, filed a New York State Income Tax Resident Return for 1973 on which they claimed, under itemized deductions, a casualty loss of \$1,529.00.

2. On May 19, 1975, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$145.36, plus interest of \$11.90, for a total of \$157.28. The Notice was issued on the grounds that

petitioners failed to substantiate that the loss at issue resulted from a casualty.

3. Petitioners were required to replace the plumbing pipes in their personal residence because they became clogged. To gain access to the pipes, required that petitioners break through a wall. The same pipes have been in use for a period in excess of fifty (50) years.

4. The progressive deterioration of the pipes resulted from a normal operating cause, and was not the result of some sudden, unexpected or unusual cause.

5. At the hearing, petitioners submitted a copy of a cancelled check dated July 1, 1976, in the amount of \$47.31, payable to the order of the New York State Department of Taxation. Petitioners contended that said payment was made by them against tax due for year at issue; and for which they have not received a credit against proposed liability.

CONCLUSIONS OF LAW

A. That the plumbing pipes deteriorated through normal obsolesence and was not due to some sudden, unexpected cause. That losses reflecting a steady deterioration of property through a steadily operating cause are not deductible (Durden v. Comm. of Internal Revenue, 3 T.C. 1 [1944]).

B. That the Audit Division is directed to ascertain whether the payment of \$47.31 for payment of tax at issue was received from petitioners. That a credit would be allowed against the deficiency if the Audit Division determines that such payment should properly be credited against the petitioners liability.

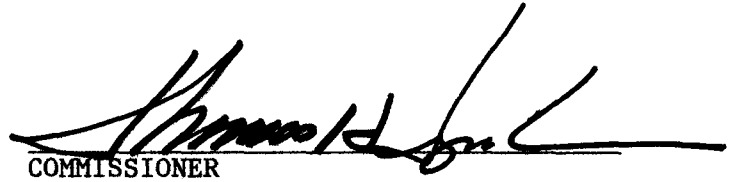
C. That the petition of Dominick Battaglia and Agatha Battaglia is denied and the Notice of Deficiency issued May 19, 1975 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 28 1980


RESIDENT


COMMISSIONER


COMMISSIONER