

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Corinno Civetta :
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 1971. _____ :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Corinno Civetta, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Corinno Civetta
1843 Barnes Ave.
Bronx, NY

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
11th day of April, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Corinno Civetta

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 1971. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Norman Greenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs Norman Greenberg
and Ronald Skolnik
110 E. 59th St.
New York, NY 10022

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
11th day of April, 1980.

Joanne Krapp

J. Vredenburg

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

April 11, 1980

Corinno Civetta
1843 Barnes Ave.
Bronx, NY

Dear Mr. Civetta:

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
Norman Greenberg
and Ronald Skolnik
110 E. 59th St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CORINNO CIVETTA	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income	:	
Tax under Article 22 of the Tax	:	
Law for the Year 1971.	:	

Petitioner, Corinno Civetta, 1843 Barnes Avenue, Bronx, New York, filed a petition for a redetermination of a deficiency or for a refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 11962).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the Offices of the State Tax Commission, Two World Trade Center, New York, New York on September 20, 1978 at 1:55 P.M. The hearing was continued before Edward Goodell, Hearing Officer, on November 28, 1978 at 1:15 P.M. The hearing was again continued and concluded before Melvin Barasch, Hearing Officer, on June 19, 1979 at 5:10 P.M. The Audit Division appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel). Petitioner appeared by Norman Greenberg and Ronald Skolnik, Esq. at the first hearing. At the subsequent hearings, petitioner appeared by Norman Greenberg.

ISSUES

I. Whether petitioner complied with the provisions of section 1033 of the Internal Revenue Code which permits taxpayers not to recognize gain realized when property is condemned.

II. Whether petitioner is required to reduce the amount of itemized deductions taken from federal adjusted gross income for allocable expenses attributable to items of tax preference in determining New York taxable income.

FINDINGS OF FACT

1. On April 11, 1975, the Income Tax Bureau issued a Statement of Audit Changes to Corinno Civetta detailing a personal income tax deficiency for the taxable year 1971 resulting from petitioner's alleged failure to comply with the provisions of section 1033 of the Internal Revenue Code permitting a taxpayer to not recognize gain realized when his property is condemned by a municipality and for not properly reducing the amount of deductions taken from federal adjusted gross income for allocable expenses attributable to items of tax preference as required by section 615(c) (4) of the Tax Law then in effect.

2. On April 11, 1975, the Income Tax Bureau issued to Corinno Civetta a Notice of Deficiency for tax year 1971 in the amount of \$3,459.69, plus interest of \$620.77, for a total of \$4,080.46.

3. In a letter dated October 23, 1978 petitioner indicated that the City of New York began condemnation action against the property in question on December 9, 1969 and that an advance payment was received on November 1, 1971 and a final payment was received May 29, 1974.

4. Petitioner attached to his 1971 Federal income tax return a statement in which he elected under section 1033 of the Internal Revenue Code not to recognize any gain on the condemned property as he intended to replace the property with other property similar or related in service or use.

CONCLUSIONS OF LAW

A. That petitioner, Corinno Civetta, did not sustain the burden of proof imposed by section 689(e) of the Tax Law to show that he purchased other property which was similar or related in service or use to replace condemned

property within 2 years after the close of the first taxable year in which any part of the gain upon the condemnation was realized.

B. That petitioner failed to prove that he had applied for and received, an extension of the 2 year period within which replacement of the converted property must be made, as provided by section 1033(a)(2)(B)(ii) of the Internal Revenue Code and Treas. Reg. section 1.1033(a)-2(c)(3).

C. That petitioner did not contest the Income Tax Bureau's reduction of deductions taken from federal adjusted gross income for allocable expenses attributable to items of tax preference pursuant to section 615(c)(4) of the Tax Law then in effect.

D. That the petition of Corinno Civetta is denied and the Notice of Deficiency issued April 11, 1975 is sustained.

DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION

James B. Sullivan
PRESIDENT

Thomas H. L.
COMMISSIONER

Francis R. Koenig
COMMISSIONER