

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
William & Elsie Franck :
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 15th day of February, 1980, he served the within notice of Decision by certified mail upon William & Elsie Franck, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William & Elsie Franck
1628 Ryder St.
Brooklyn, 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
15th day of February, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William & Elsie Franck :
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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 15th day of February, 1980, he served the within notice of Decision by certified mail upon John R. Serpico the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

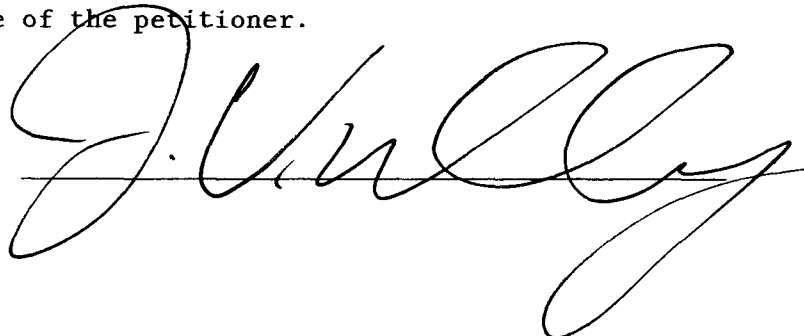
Mr. John R. Serpico
186 Joralemon St.
Brooklyn, NY 11201

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
15th day of February, 1980.

Joanne Knapp



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

February 15, 1980

William & Elsie Franck
1628 Ryder St.
Brooklyn, NY

Dear Mr. & Mrs. Franck:

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
John R. Serpico
186 Joralemon St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
WILLIAM FRANCK AND ELSIE FRANCK
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1973.

DECISION

Petitioners, William Franck and Elsie Franck, 1628 Ryder Street, Brooklyn, New York 11237, 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. 17935).

A small claims hearing was held before William Valcarcel, Hearing Officer, on January 12, 1979 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Petitioners appeared by John Serpico, Esq. The Audit Division appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUES

- I. Whether petitioner is entitled to a rental loss during the year 1973.
- II. Whether an expense of \$21,000.00 was properly used to adjust the cost basis of property sold in 1973.

FINDINGS OF FACT

1. Petitioners, William Franck and Elsie Franck, timely filed a joint New York State Income Tax Resident Return for 1973, on which a rental loss of \$8,885.42, a capital gain of \$47,406.77 (before any New York modifications) and the standard deduction of \$2,000.00 were claimed. On August 7, 1974, an amended New York State Income Tax Resident Return for 1973 was filed, on which

itemized deductions of \$3,422.53 (in lieu of the standard deduction) and a rental loss of \$38,620.92 were claimed. All other income and deduction items, including the capital gain item, remained unchanged.

2. On audit, the Audit Division issued a Notice of Deficiency on December 20, 1976, along with an explanatory Statement of Audit Changes, on which:

- (a) the rental loss of \$38,620.92 was disallowed in full. However, real estate taxes of \$28,775.18, and interest expenses of \$7,660.70, included in the rental loss, were allowed as an itemized deduction;
- (b) the long-term capital gain reported (before any New York modifications) was adjusted to reflect the disallowance of a \$21,000.00 expense that was used to increase the adjusted cost basis of the property sold. An additional adjustment was made to reflect a depreciation expense deduction loss due to the disallowance of the rental loss;
- (c) additional adjustments and recomputations in accordance with sections 615(c)(4), 612(b)(1) and 622 of the Tax Law, were made as a direct result of the aforementioned adjustments. (Paragraphs 2.(a) and 2.(b) of this decision).

3. On October 18, 1973, petitioner William Franck sold a parcel of property located at 6095 Strickland Avenue, in the City and State of New York. Petitioners contended that this property was originally purchased, and subsequently rented, with a profit motive, to five tenants, including Duropave, Inc., of which petitioner William Franck was the principal shareholder. Petitioners further contended that no rent was paid to petitioner William Franck from any tenant during 1973, since all tenants were asked to vacate the premises. Petitioner William Franck also contended that he paid \$21,000.00 to Duropave, Inc., who "undertook to clean the site for the purchaser".

4. Petitioners did not offer any sworn testimony. Petitioners submitted into evidence a decision from a landlord-tenant civil action, a contract of sale for the 6095 Strickland Avenue property and various billings from Duropave, Inc. No other evidence was submitted in support of petitioners' contentions.

CONCLUSIONS OF LAW

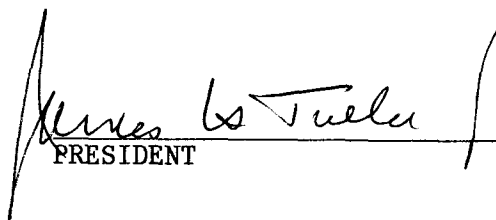
A. That petitioners, William and Elsie Franck, have failed to sustain the burden of proof, as required by section 689(e) of the Tax Law in establishing that they were entitled to a rental loss, or that an expense of \$21,000.00 was incurred and properly used to adjust the cost basis of the property at issue.

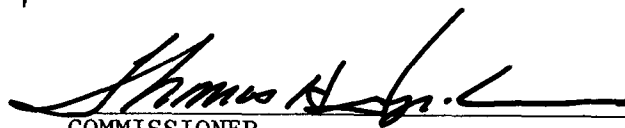
B. That the petition of William Franck and Elsie Franck is denied and the Notice of Deficiency issued December 20, 1976 for the year 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 15 1980


PRESIDENT


COMMISSIONER

COMMISSIONER