

STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_ :  
In the Matter of the Petition :  
of :  
Peter & Shirley Gilbert :  
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. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Peter & Shirley Gilbert, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

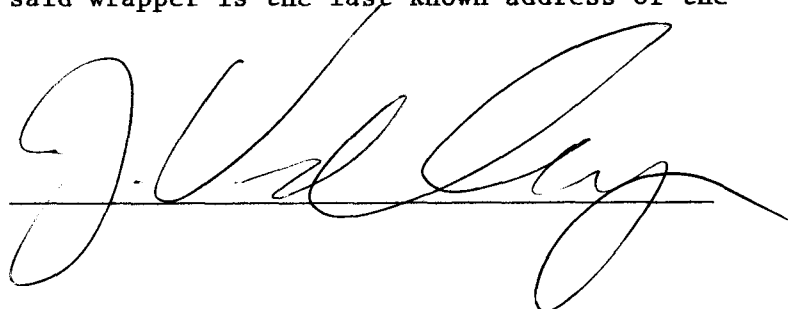
Peter & Shirley Gilbert  
20 Split Rock Dr.  
Kings Point, NY 11024

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  
3rd day of October, 1980.

Geoffrey Bank

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Peter & Shirley Gilbert :  
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. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Frederick Wertheimer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

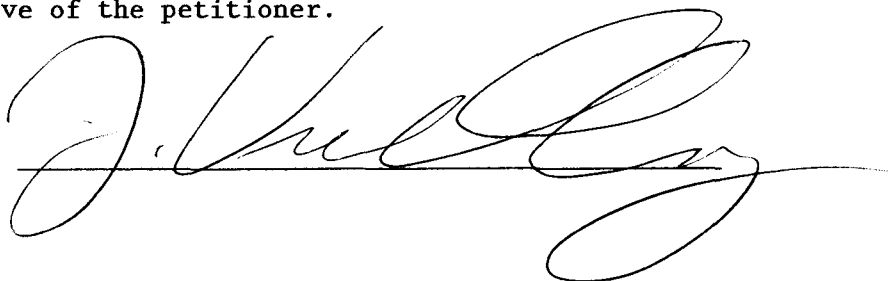
Mr. Frederick Wertheimer  
370 Lexington Ave.  
New York, NY 10017

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  
3rd day of October, 1980.

Frederick Wertheimer



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

October 3, 1980

Peter & Shirley Gilbert  
20 Split Rock Dr.  
Kings Point, NY 11024

Dear Mr. & Mrs. Gilbert:

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  
Frederick Wertheimer  
370 Lexington Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
PETER GILBERT and SHIRLEY GILBERT  
for Redetermination of a Deficiency or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Year  
1970.

DECISION

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Petitioners, Peter Gilbert and Shirley Gilbert, 20 Split Rock Drive, Kings Point, New York 11024, 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 1970 (File No. 12618).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 17, 1978 at 9:15 A.M. Petitioners appeared by Frederick Wertheimer, Esq. The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

#### ISSUE

Whether interest expenses deducted by petitioners constituted investment interest subject to minimum income tax.

#### FINDINGS OF FACT

1. On October 28, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners Peter Gilbert and Shirley Gilbert in which their New York State personal income tax was recomputed based on the premise that excess investment interest expense was an item of tax preference and that section 615(c)(4) of the Tax Law requires that a modification be made for allocable expenses attributable to items of tax preference in excess of the

specific deduction. Accordingly, a Notice of Deficiency was issued in the amount of \$25,527.71, plus interest of \$5,415.19, for a total of \$30,942.90.

2. In the analysis of petitioners' fifteen items of interest expense, it was stipulated that nine of the items were or were not investment interest and were not in issue. The nine items stipulated to are as follows:

<u>Lender</u>	<u>Interest Paid</u>	<u>Stipulation</u>
Equitable Life Insurance Co.	\$2,702.00	Not investment interest
Walston & Co.	650.00	Investment interest
Weis, Voisin and Cannon	51.00	Investment interest
State Dept. of Taxation and Finance	807.00	Not investment interest
Internal Revenue Service	2,247.00	Not investment interest
Automatic Metal Products Corp.	2,209.00	Not investment interest
B & W Associates	3,333.00	Not investment interest
Jack Onore	5,781.00	Not investment interest
Franklin National Bank	5,394.00	Not investment interest

3. The following items remain in issue as to whether they constituted investment interest:

<u>Lender</u>	<u>Interest Paid</u>	<u>Specific Purpose</u>
Community State Bank	\$ 5,217.00 1,240.00	Discounted note received from purchaser of personal property
Central State Bank	21,413.00	Proceeds used to acquire fine arts
Security National Bank of Long Island	81,473.00	Purchase of paintings, home improvements and personal items
Security Pacific National Bank	72,025.00	Investment in garden apartments (California partnership)
Howard Franklin	4,890.00	Advances for garden apartments investment
American Bank & Trust	166.00	Checking account overdrafts

4. During 1970, petitioners invested in fine arts used in their residence which comprised part of their personal property. They invested in a California garden apartment complex which produced income and also in two California

partnerships, Eldorado Enterprises and also The Anthony Company. These partnerships owned and operated legalized card parlors.

CONCLUSIONS OF LAW

A. That during the year at issue, and prior to the amendment of section 57 of the Internal Revenue Code by P.L. 94-455, excess investment interest, the excess of investment interest expense over net investment income was an item of tax preference.

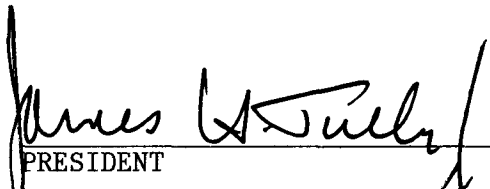
B. That petitioners Peter Gilbert and Shirley Gilbert failed to sustain their burden of proof imposed by section 689(e) of the Tax Law in establishing that the items shown in Finding of Fact "3" supra did not constitute excess investment interest.


C. That the petition of Peter Gilbert and Shirley Gilbert is granted to the extent that the items stipulated to as not being investment interest (Finding of Fact "2") were not items of tax preference. The Audit Division is hereby directed to modify the Notice of Deficiency issued October 28, 1974, and that, except as so granted, the petition is in all other respects denied.

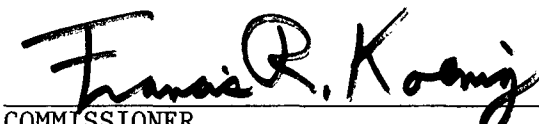
DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

Oct. 3  
1968  
106

REQUEST FOR BETTER ADDRESS

10-3 For. Dev. (27)

Requested by <i>J. Kelly</i>	Unit - Appeals Bureau Room 107 - Bldg. 49 110 Nassau New York 10027	Date of Request
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>452-414-6518</i> <i>079-20-7886</i>	Date of Petition <i>75-01-27</i>
Name <i>Peter &amp; Shirley Gilbert</i>	
Address <i>20 Split Rock Dr.</i> <i>Kings Point, N.Y.</i> <i>11024</i>	

Results of search by Files

<input checked="" type="checkbox"/> New address:	<i>SHIRLEY</i> <i>200 5 Ave / Kings Point</i> <i>New York, N.Y. 10026</i>
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>40R-1075</i> <i>370 Lexington Av.</i> <i>10017</i> <i>New York, N.Y.</i>

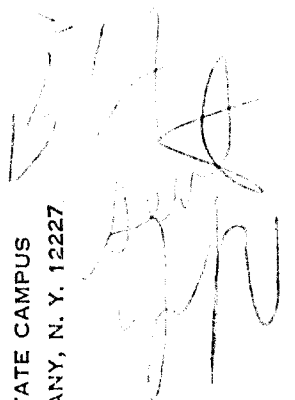
Searched by <i>J. Kelly</i>	Section <i>1075</i>	Date of Search <i>10/1/68</i>
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PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER

TA-28 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



Peter & Shirley Gilbert  
20 Split Rock Dr.  
Kings Point, NY 11024



remailed  
11/7/80





STATE OF NEW YORK  
STATE TAX COMMISSION

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Peter & Shirley Gilbert :  
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for the Year 1970. :

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 7th day of November, 1980, he served the within notice of Decision by certified mail upon Peter & Shirley Gilbert, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

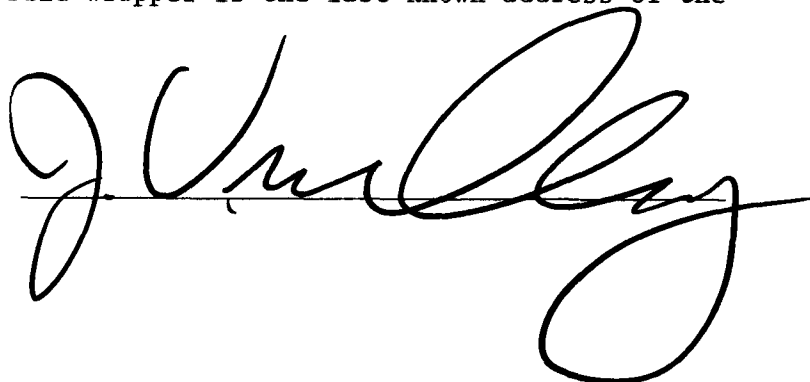
Peter & Shirley Gilbert  
370 Lexington Ave.  
c/o Wertheimer  
New York, NY

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  
7th day of November, 1980.

Deborah A Bank



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Peter & Shirley Gilbert  
500 5th Ave.  
Goldberg Rose Co.  
New York, NY 10036

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.

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Sworn to before me this  
7th day of November, 1980.

Debra A Bank

