

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
William & Davelyn Hilty :
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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon William & Davelyn Hilty, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

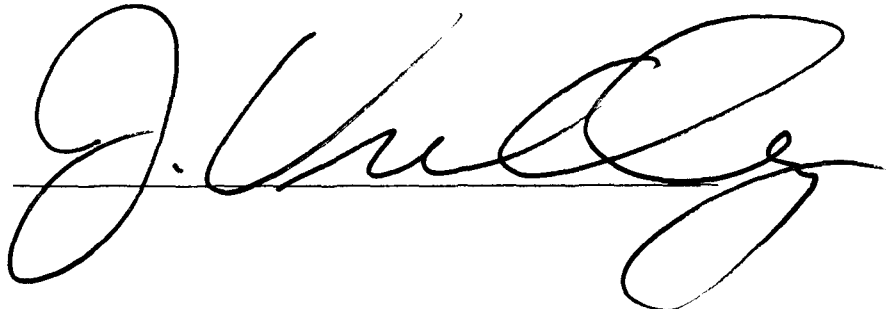
William & Davelyn Hilty
1820 Brentwood Dr.
Troy, MI 48098

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
23rd day of May, 1980.

Joanne Knapp



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

May 23, 1980

William & Davelyn Hilty
1820 Brentwood Dr.
Troy, MI 48098

Dear Mr. & Mrs. Hilty:

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 :
WILLIAM HILTY and DAVELYN HILTY :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :

DECISION

Petitioners, William Hilty and Davelyn Hilty, 1820 Brentwood Drive, Troy, Michigan 48098, 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 1971 (File No. 13229).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 25, 1978 and January 9, 1979 at 10:45 A.M. and 2:45 P.M., respectively. Petitioner William Hilty appeared pro se and for his wife. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether amounts reported on petitioners' 1971 personal income tax return as a capital loss, rental income and expense, employee business expenses and medical and dental expenses are correct.

FINDINGS OF FACT

1. Petitioners, William Hilty and Davelyn Hilty, timely filed a joint New York State Income Tax Resident Return for 1971.
2. On October 16, 1973, the Income Tax Bureau issued a Statement of Audit Changes wherein, as the result of an audit, various adjustments were made as follows:

	<u>Amount Reported On Return</u>	<u>Corrected Amount</u>	<u>Adjustment</u>
Sale or Exchange of Capital Assets	(\$2,204.00)	\$2,829.00	\$5,033.00
Rental Income and Expense	73.00	999.00	926.00
Employee Business Expense (home office)	1,019.00	-0-	1,019.00
Medical and Dental Expense	3,147.00	3,036.00	111.00
Medical and Dental Adjustment			<u>209.34</u>
Total Adjustment			\$7,298.34

Accordingly, a Notice of Deficiency was issued against petitioners on January 27, 1975 asserting additional personal income tax due in the amount of \$1,021.77, plus interest of \$170.60, for a total due of \$1,192.37.

3. Petitioners sold a house used for the production of rental income, located at 46 Carriage Stone Drive, Chagrin Falls, Ohio in February 1971 for \$47,000.00. In computing their gain or loss from sale of said house, petitioners increased their basis by various capital improvements and selling costs. The net result as reported computed to a loss of \$2,204.00. In preparing their Federal return, this loss was claimed as an ordinary loss. The full loss was also claimed as an ordinary loss on their New York State return although it was reported as a capital loss. The Income Tax Bureau determined said loss to be a capital loss rather than an ordinary loss. This determination was not contested by petitioners. Documentation submitted during the course of the hearing held herein established that a net capital gain was derived from the sale in the amount of \$19.50.

4. Documentation was presented during the hearing substantiating net rental income in the amount of \$157.00 derived from real property located at Sheffield Lake, Ohio. During the hearing, petitioner contended that he was additionally entitled to claim a rental loss for the month of January, 1971, incurred from the Chagrin Falls property, but he was unable to substantiate this contention.

5. Petitioner contends that he is properly entitled to a deduction for a

"home office". In computing said deduction, he claimed 20 percent of the expenses incurred to maintain an apartment located at 50 Barker Street, Mt. Kisco, New York. No substantiation was presented to show that petitioner was required, as a condition of his employment, to provide his own space for performing his duties or that he regularly used such space.

6. Petitioners submitted checks evidencing bona fide medical and dental expenses of \$3,910.00. They contended that they received no reimbursement for these expenses since they had no medical insurance.

CONCLUSIONS OF LAW

A. That based on substantiation presented, petitioners derived a net capital gain of \$19.50 from the sale of the Chagrin Falls property. Since a loss was claimed in the amount of \$2,204.00, the net adjustment is determined to be \$2,223.50.

B. That based on substantiation presented, petitioners incurred net rental income from the real property located in Sheffield Lake, Ohio, in the amount of \$157.00. Since a net rental income of \$73.00 was reported, the adjustment to rental income and expenses is computed to be \$84.00.

C. That petitioner William Hilty has not sustained the burden of proof required under section 689(e) of the Tax Law to show that he is entitled to a deduction for an office in his home. Accordingly, the adjustment to this deduction is sustained.

D. That petitioners are entitled to a deduction for medical and dental expenses in the amount of \$2,724.00. Said amount is computed by reducing substantiated expenses of \$3,910.00 by the 3 percent limitation required under section 213(a)(1) of the Internal Revenue Code. Since petitioners claimed a deduction of \$3,147.00, the adjustment required is computed to be \$423.00.

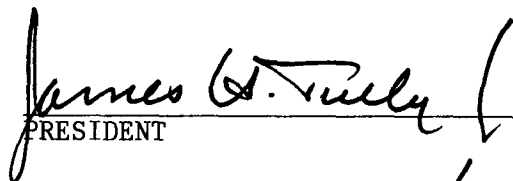
E. That the petition of William Hilty and Davelyn Hilty is granted to

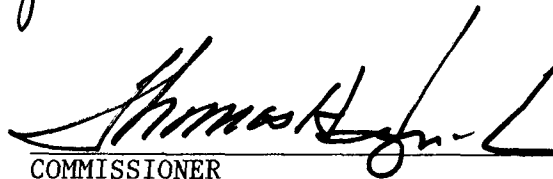
the extent provided in Conclusions of Law "A", "B" and "D" supra. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 27, 1975 to be consistent with the determination rendered herein; and that, except as so granted, the petition is in all other respects denied.

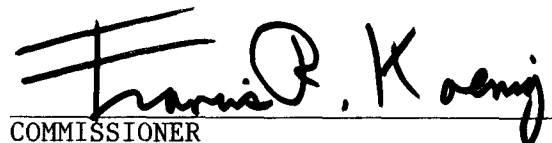
DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1980


PRESIDENT


COMMISSIONER


COMMISSIONER