

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Morris & Selma Rothstein :
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 1975. :

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 January, 1980, he served the within notice of Decision by certified mail upon Morris & Selma Rothstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris & Selma Rothstein
306 E. Devonia Ave.
Mt. Vernon, NY 10550

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 January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Morris & Selma Rothstein :
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Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1975. :

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 January, 1980, he served the within notice of Decision by certified mail upon Robert Rothstein 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. Robert Rothstein
31 Dawson Rd.
Kendall Park, NJ 08824

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
7th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 7, 1980

Morris & Selma Rothstein
306 E. Devonia Ave.
Mt. Vernon, NY 10550

Dear Mr. & Mrs. Rothstein:

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
Robert Rothstein
31 Dawson Rd.
Kendall Park, NJ 08824
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MORRIS ROTHSTEIN and SELMA ROTHSTEIN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1975.

Petitioners, Morris Rothstein and Selma Rothstein, 306 E. Devonia Avenue, Mt. Vernon, New York 10550, 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 1975 (File No. 21610).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1979 at 1:15 P.M. Petitioners appeared by Robert Rothstein. The Audit Division appeared by Ralph Vecchio, Esq. (S. Freund, Esq., of counsel).

ISSUE

Whether a casualty loss of \$4,177.25 was properly deducted.

FINDINGS OF FACT

1. Petitioners, Morris Rothstein and Selma Rothstein, timely filed a New York State Combined Income Tax Return for the year 1975, on which a casualty loss of \$4,177.25 was deducted.

2. As a result of a desk audit conducted by the Audit Division, the casualty loss of \$4,177.25 was reduced to \$1,006.25, resulting in an adjustment of \$3,171.00. Also, contributions of \$475.00 were reduced to \$450.00. On June 21, 1977, the Audit Division issued a Statement of Audit Changes against petitioner Morris Rothstein and another against petitioner Selma Rothstein applying the audit adjustments as follows:

	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>ADJUSTMENT</u>
(a) Contributions	\$ 475.00	\$ 450.00	\$ 25.00
Casualty Loss	<u>3,636.34</u>	<u>1,006.25</u>	<u>2,630.09</u>
ADJUSTMENTS TO MORRIS ROTHSTEIN			<u>\$2,655.09</u>
(b) Casualty Loss	<u>540.91</u>	<u>-0-</u>	<u>540.91</u>
ADJUSTMENT TO SELMA ROTHSTEIN			<u>\$ 540.91</u>

On February 27, 1978, the Audit Division issued a Notice of Deficiency against Morris Rothstein in the sum of \$172.01 and another against Selma Rothstein in the sum of \$32.12, both of which were based on the two aforementioned statements of audit changes. The adjustment of \$25.00 to contributions was conceded to and is not at issue.

3. On November 10, 1975, the personal residence of petitioners, Morris and Selma Rothstein, was burglarized, and a box containing jewelry was taken. The burglary was reported to the Mount Vernon Police Department and to petitioners' insurance company. Petitioners determined their casualty loss deduction as follows:

Total Burglary Loss	\$6,547.20
Less: Insurance Reimbursement	<u>2,269.95</u>
Net Loss	\$4,277.25
Less: \$100.00 Limitation	<u>100.00</u>
Casualty Loss Claimed	<u>\$4,177.25</u>

The total loss at issue consisted of jewelry, accumulated over the years, which was received by petitioner Selma Rothstein in the form of gifts from friends and relatives.

4. As a result of their desk audit, the Audit Division determined the casualty loss as follows:

Total Burglary Loss	\$3,376.20
Less: Insurance Reimbursement	<u>2,269.95</u>
Net Loss	\$1,106.25
Less: \$100.00 Limitation	<u>100.00</u>
Casualty Loss Allowed	<u><u>\$1,006.25</u></u>

5. During the hearing, petitioners submitted six notarized statements from friends and relatives describing the jewelry and stating its value, which amounted to the sum of \$3,295.00. No evidence was submitted in reference to the balance of the burglary loss claimed. Although petitioner indicated that the total loss claimed of \$6,547.20 was an estimate and reconstructed from memory, an itemized list of all the jewelry stolen was not submitted.

CONCLUSIONS OF LAW

A. That petitioners Morris and Selma Rothstein have failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that they incurred a burglary loss greater than that allowed by the Audit Division.

B. That the petition of Morris Rothstein and Selma Rothstein is denied and the notices of deficiency issued February 27, 1978 in the sums of \$172.01 and \$32.12 for the year 1975 are sustained, together with such additional interest as may be lawfully due.

DATED: Albany, New York
JAN 7 1980

STATE TAX COMMISSION

James A. Tully

PRESIDENT

Thomas H. ...

COMMISSIONER

COMMISSIONER