

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Dolores J. Russell :

formerly Delores J. Sutliff :

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 1965.

State of New York
County of Albany

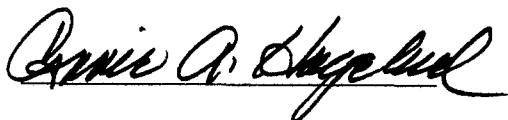
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon Dolores J. Russell, formerly Delores J. Sutliff the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

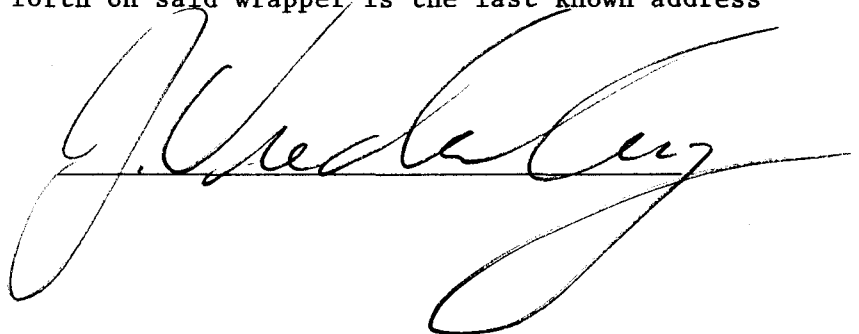
Dolores J. Russell
formerly Delores J. Sutliff
2836 S.E. Colt Dr.
Apt. 280
Portland, OR 97202

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
30th day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dolores J. Russell :
formerly Delores J. Sutliff :
: 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 :
1965. :

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Ferris F. Boothe the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

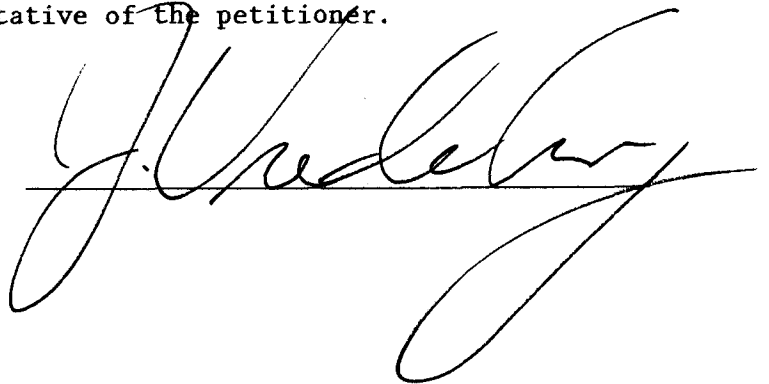
Ferris F. Boothe
Black, Kendall, Tremaine, Boothe & Higgins
3100 First National Bank Tower
Portland, OR 97201

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
30th day of October, 1981.





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

October 30, 1981

Dolores J. Russell
formerly Delores J. Sutliff
2836 S.E. Colt Dr.
Apt. 280
Portland, OR 97202

Dear Ms. Russell:

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
Ferris F. Boothe
Black, Kendall, Tremaine, Boothe & Higgins
3100 First National Bank Tower
Portland, OR 97201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| DOLORES J. RUSSELL | : | |
| formerly | : | DECISION |
| DOLORES J. SUTLIFF | : | |
| For Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1965. | : | |

Petitioner, Dolores J. Russell, formerly Dolores J. Sutliff, Apt. 280, 2836 S.E. Colt Drive, Portland, Oregon 97202, 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 1965 (File No. 11863).

Petitioner waived a formal hearing in this matter and requested the Tax Commission to issue a decision based upon the record as it is presently constituted.

ISSUES

- I. Whether petitioner is entitled to a refund of New York personal income tax for the year 1965 as a result of a loss arising from theft.
- II. Whether the loss arising from theft occurred in 1965.
- III. Whether the petitioner discovered the loss arising from theft in 1965.
- IV. Whether the Tax Commission is bound by the findings of facts of the U.S. District Court, District of Oregon, later reversed by the U.S. Court of Appeals, Ninth Circuit.

FINDINGS OF FACT

1. On October 16, 1966, petitioner filed a New York State income tax resident return for 1965. On September 5, 1969, petitioner filed an amended

return for 1965 and a claim for refund of personal income tax for the year 1965 in the amount of \$10,679.14.

2. The claim for refund is predicated on the contention of petitioner that she was the victim of a conspiracy to defraud her of substantial sums in cash and from the sale of of stock by certain individuals in the amount of \$343,200.00 in 1965.

3. By notice dated October 26, 1971, petitioner's claim for refund was denied. Petitioner timely filed a petition for redetermination of said denial.

4. Prior to 1965, petitioner had been the recipient of gifts valued in excess of one million dollars which she had received from the founder and board chairman of Xerox Corporation. In 1965 petitioner became involved with one Allie Ianiello. Upon discovering the wealth of petitioner, Ianiello, with members of his family and their attorney, proceeded to swindle petitioner out of her money through investment ventures in "businesses" owned and operated by the Ianniello. These investment ventures occurred in the 1965 tax year.

5. Fearing for her life, petitioner left the State of New York. Thereafter, with the help of an attorney, petitioner attempted to recoup her losses. Recovery efforts were, for the most part, unsuccessful. In 1969, failing to recoup the major part of her investments, petitioner located another attorney who threatened the Ianniello with legal action unless the "investments" were repaid to petitioner.

6. In 1969, petitioner filed a claim for refund of her Federal income taxes for the year 1965 on the basis that she had suffered a theft loss pursuant to Section 165(e) of the Internal Revenue Code. On February 1, 1973, she commenced an action in U.S. District Court in Oregon for a refund of about \$65,000.00, which amount was alleged to have been overpaid by reason of the alleged theft loss.

7. On April 10, 1973, the Commissioner of Internal Revenue issued a statutory notice of deficiency for 1965 in the amount of about \$50,000.00. Petitioner timely petitioned the Tax Court for a redetermination of the deficiency and pending the Tax Court's redetermination, the District Court dismissed petitioner's claim for a refund.

8. The Tax Court held that the government was precluded by the statute of limitations from asserting a deficiency against petitioner and that there was no deficiency. Petitioner did not assert her claim of a 1965 theft loss before the Tax Court. She asked the Court not to decide that issue. Although the Commissioner of Internal Revenue asked the Tax Court to decide the theft loss issue, it failed to do so.

9. After the judgment of the Tax Court, the U.S. District Court reinstated petitioner's refund suit and held that the taxes paid for 1965 were recoverable by petitioner as a theft loss deduction for that year pursuant to 26 U.S.C. Section 165(e). The Commissioner appealed. The United States Court of Appeals, Ninth Circuit, reversed the U.S. District Court decision with directions to vacate the judgment and dismiss the action (592 F.2d 1069). The Appeals Court held that the Tax Court acquired jurisdiction to decide not only whether the Commissioner's assertion of a deficiency was correct, but also whether petitioner's claim that she had overpaid was correct. It further held that the Tax Court's decision was res judicata as to the particular year in question; that petitioner was not entitled to assert her claim in the District Court for refund of income tax on the asserted ground that she had been forced into the Tax Court by reason of her inability to pay the asserted deficiency; that the theft loss for income tax purposes was to be made not when the alleged swindlers got petitioner's money, but when it became apparent that the petitioner could not get it back.

Petitioner filed a writ of certiorari to review the decision of the Court of Appeals but the U.S. Supreme Court denied certiorari.

10. Petitioner did not determine that she could not get her money back until after 1965. Petitioner did not discover her loss from theft during the year 1965.

CONCLUSIONS OF LAW

A. That the U.S. District Court decision that petitioner was entitled to a refund of taxes paid for 1965 as a theft loss deduction is not binding on the State Tax Commission

B. That the theft loss did not occur in 1965 as more fully set forth in Finding of Fact "10" supra.

C. That the theft loss was not sustained in 1965 within the meaning of Section 165(e) of the Internal Revenue Code.

D. That petitioner is not entitled to a refund of New York State income tax for the year 1965.

E. That the petition of Dolores J. Russell, formerly Dolores J. Sutliff, is hereby denied.

Dated, Albany, New York

OCT 30 1981

STATE TAX COMMISSION

James W. Tuohy
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

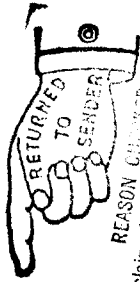
State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

BA
12/2/81



REASON CHECKED

Unclaimed _____
Addressee unknown _____
Insufficient address _____
No such street _____
No such office in state _____
Do not remain in this envelope _____

DATE

11/3
1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Oct 1980

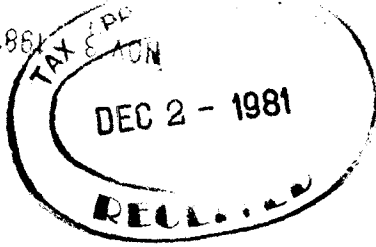
CERTIFIED

104 3452207

MAIL

Dolores J. Russell
formerly Delores J. Sutliff
2836 S.E. Colt Dr.
Apt. 280
Portland, OR 97202

work 223



NOV 18 1981

CONVULS
MULTIPLE

SOFT COPY CHECK

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Oct 1980

REQUEST FOR BETTER ADDRESS*Jan Doe*

| | | |
|------------------------------------|---|-----------------------------------|
| Requested by <i>Jan Schutty</i> | Unit <i>Calendar Tax Appeals</i> | Date of Request <i>12/2/81</i> |
|------------------------------------|---|-----------------------------------|

Please find most recent address of taxpayer described below; return to person named above.

| | |
|--|-------------------------------------|
| Social Security Number <i>540-36-8469</i> | Date of Petition <i>74/10/08</i> |
| Name <i>Dolores F. Russell (Dolores F. Suthoff formerly)</i> | |
| Address <i>2836 S. E. Cold DR Apt 280 Portland OR 97202</i> | |

Results of search by Files

| | |
|---|-----------------------------|
| <input type="checkbox"/> New address: | |
| <input type="checkbox"/> Same as above, no better address | |
| <input checked="" type="checkbox"/> Other: | <i>0-80# 079# 0-79#</i> |

| | | |
|---|---|--|
| Searched by <i>L. Panetta</i> <i>Spollock</i> | Section <i>Master Index</i> <i>M.I.</i> | Date of Search <i>12-8-81</i> <i>12-8-81</i> |
|---|---|--|

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

October 30, 1981

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formerly Delores J. Sutliff
2836 S.E. Colt Dr.
Apt. 280
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Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ferris F. Boothe
Black, Kendall, Tremaine, Boothe & Higgins
3100 First National Bank Tower
Portland, OR 97201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| Refund of Personal Income Tax under Article 22 | : | |
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8. The Tax Court held that the government was precluded by the statute of limitations from asserting a deficiency against petitioner and that there was no deficiency. Petitioner did not assert her claim of a 1965 theft loss before the Tax Court. She asked the Court not to decide that issue. Although the Commissioner of Internal Revenue asked the Tax Court to decide the theft loss issue, it failed to do so.

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CONCLUSIONS OF LAW

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B. That the theft loss did not occur in 1965 as more fully set forth in Finding of Fact "10" supra.

C. That the theft loss was not sustained in 1965 within the meaning of Section 165(e) of the Internal Revenue Code.

D. That petitioner is not entitled to a refund of New York State income tax for the year 1965.

E. That the petition of Dolores J. Russell, formerly Dolores J. Sutliff, is hereby denied.

Dated, Albany, New York

OCT 30 1981

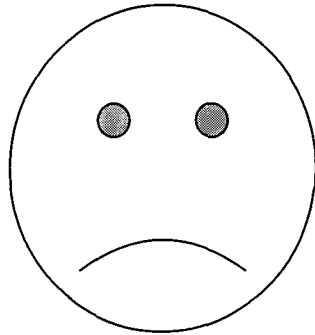
STATE TAX COMMISSION

James W. Tuohy
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER

**CORRECTION
FOLLOWS**



STATE OF NEW YORK

STATE TAX COMMISSION

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| DOLORES J. RUSSELL | : | |
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