

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Arnold & Anne Spurr :

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 1970. :

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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Arnold & Anne Spurr, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arnold & Anne Spurr  
61 Wildwood Road  
Chappaqua, NY 10514

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  
22nd day of February, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Arnold & Anne Spurr :  
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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon John M. Bennett the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

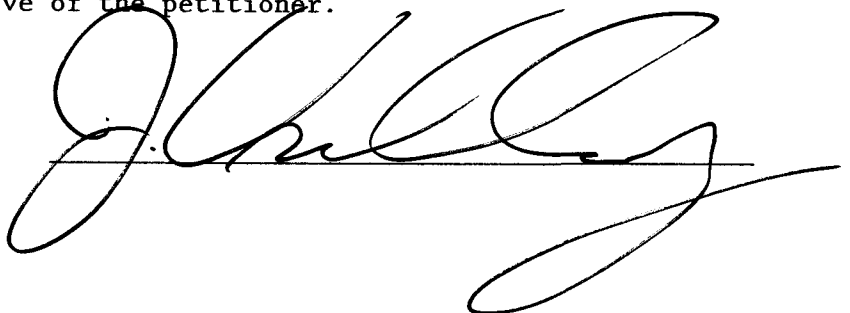
Mr. John M. Bennett  
Emmet, Marvin & Martin  
48 Wall St.  
New York, NY

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 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  
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

Arnold & Anne Spurr  
61 Wildwood Road  
Chappaqua, NY 10514

Dear Mr. & Mrs. Spurr:

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 M. Bennett  
Emmet, Marvin & Martin  
48 Wall St.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ARNOLD SPURR and ANNE SPURR	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

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Petitioners, Arnold Spurr and Anne Spurr, 61 Wildwood Road, Chappaqua, New York 10514, 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. 00402).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 29, 1976 at 10:45 A.M. Petitioners appeared by Emmet, Marvin & Martin (John E. Bennett, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Arthur Rosen, Esq., of counsel).

ISSUE

Whether the loss incurred by petitioner Arnold Spurr on the redemption of 400 shares of stock by his corporate employer constituted a loss from sale of a capital asset or whether it was deductible as an ordinary loss.

FINDINGS OF FACT

1. Petitioners, Arnold Spurr and Anne Spurr, filed a New York State Combined Income Tax Return for 1970 and reported thereon an ordinary loss of \$39,600.00. Accordingly, petitioners' New York adjusted gross income was reduced by this amount.

2. On April 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes for the year 1970 to petitioners, stating additional personal income tax due of \$5,404.00. This was based on the treatment of the \$39,600.00 loss as a capital loss (whereby only \$1,000.00 of the loss was deductible in 1970), rather than as an ordinary loss as reported by petitioners. Accordingly, on May 20, 1974, a Notice of Deficiency was issued to petitioners, Arnold and Anne Spurr, stating a deficiency of \$5,404.00, plus interest to that date of \$1,004.17, for a total of \$6,408.17.

3. Petitioner Arnold Spurr was employed by the brokerage corporation of Glore Forgan, William R. Statts, Inc. during the years 1968, 1969 and for part of 1970. His position with the firm was that of New York institutional sales manager.

4. Petitioner Arnold Spurr earned approximately \$65,000.00, \$100,000.00 and \$105,000.00 for the years 1968, 1969 and 1970, respectively. He was with Glore Forgan, William R. Statts, Inc. for only five months in 1970, during which time his wages totalled \$42,698.52.

5. Petitioner Arnold Spurr was entitled to a \$40,000.00 bonus from the firm, based on his performance in 1968.

6. During the early part of 1969, petitioner Arnold Spurr concluded (from conversations with superiors in the corporation) that any advancement, or even his remaining with the corporation, was dependent on his purchase of 400 shares of the corporation's stock at \$100.00 per share.

7. Petitioner Arnold Spurr purchased 400 shares of the corporation's stock in the spring of 1969, and the bonus due him was retained by the corporation in payment of the shares purchased.

8. Petitioner Arnold Spurr had never made an investment of \$40,000.00 in any security and had no opinion (at the time of his committal) as to whether the shares of stock in his employer/corporation were a good investment.

9. Subsequently, further approaches were made to petitioner Arnold Spurr to secure capitalization of corporate operations, whereby he would be individually responsible, as a shareholder, on a personal loan made to the corporation. Two such loans were made for \$75,000.00 each.

10. Later in 1969 and 1970, petitioner Arnold Spurr became aware of the financial difficulties that his employer was experiencing. Rumors of a possible merger, the uncertain treatment his two loans would receive in such an event and finally, the uncertainty of his position in the event of such a merger, prompted him to consider seeking employment elsewhere.

11. In May, 1970, petitioner Arnold Spurr resigned from Glore Forgan, William Statts, Inc. At that time, the ownership of shares in a brokerage corporation was restricted and shares could not be owned by persons who were not members of the brokerage corporation. Arnold Spurr's departure from the corporation necessitated the redemption of his stock. The redemption price was at the rate of \$1.00 per share.

#### CONCLUSIONS OF LAW

A. That section 612(a) of the Tax Law provides that the New York adjusted gross income of a resident individual means his Federal adjusted gross income as defined in the laws of the United States for the taxable years (subject to certain modifications, which modifications are not applicable here).

B. That section 165 of the Internal Revenue Code provides, in part, that a loss sustained during the taxable year not compensated for by insurance or otherwise is allowed as a deduction, except that an individual is limited

to losses incurred in a trade or business and that losses from sales or exchanges of capital assets are allowed only to the extent allowed in sections 1211 and 1212 of the Internal Revenue Code.

C. That losses on the sale or exchange of a capital asset would be limited in this instance (pursuant to section 1211 of the Internal Revenue Code) to the extent of \$1,000.00.

D. That the redemption of petitioner's stock technically constituted a sale or exchange of a capital asset and as such would be a capital loss.

E. That Conclusion of Law "D" above notwithstanding, numerous cases recognize that stock which is technically within the definition of a capital asset had been acquired by a taxpayer for a purpose so directly connected with a trade or business that the gain or loss from its sale may be an ordinary gain or loss deductible under section 165(a) or an ordinary and necessary business expense deductible under section 162(a) (e.g., Corn Products Refining Co. v. Commissioner 350 US 46, Booth Newspapers, Inc. v. United States 303 F2d 916, Charles W. Steadman 50 TC 369, aff'd 424 F2d1).

F. That petitioner Arnold Spurr purchased the stock to protect his income, based on his conclusion drawn from references that his failure to do so might cost him his job; therefore, such purchase was clearly not motivated by investment purposes.

G. That in accordance with Conclusion of Law "F", above, petitioner Arnold Spurr's purchase of the 400 shares of stock at \$100.00 per share and its subsequent redemption for \$1.00 per share resulted in an ordinary loss to petitioners herein (Elmer Carsello 35 TCM 832).

H. That the petition of Arnold Spurr and Anne Spurr is granted and the Notice of Deficiency issued May 20, 1974 is cancelled.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
The Estate of Joseph Staffa :  
c/o Frances LaVista : 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 Years 1970 - 1973. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon The Estate of Joseph Staffa, c/o Frances LaVista, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Estate of Joseph Staffa  
c/o Frances LaVista  
36 A Green St.  
Westwood, NJ 07675

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  
11th day of April, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
The Estate of Joseph Staffa :  
c/o Frances LaVista : 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 Years 1970 - 1973. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Edward C. Clarke 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. Edward C. Clarke  
37-14 90th Street  
Jackson Heights, NY 11372

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  
11th day of April, 1980.

Joanne Knapp

J. Vredenburg

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

April 11, 1980

The Estate of Joseph Staffa  
c/o Frances LaVista  
36 A Green St.  
Westwood, NJ 07675

Dear Ms. LaVista:

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  
Edward C. Clarke  
37-14 90th Street  
Jackson Heights, NY 11372  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
THE ESTATE OF JOSEPH STAFFA	:	DECISION
FRANCES LA VISTA, ADMINISTRATRIX	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970, 1971, 1972 and 1973.	:	

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Petitioner, The Estate of Joseph Staffa, c/o Frances La Vista, Administratrix, 36A Green Street, Westwood, New Jersey 07675, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970, 1971, 1972 and 1973 (File No. 14093).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on August 9, 1979 at 1:15 P.M. Petitioner appeared by Edward C. Clarke, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether the statute of limitations has passed since no assessment has been made from the time the State Tax Commission was notified of the safety deposit box opening to the present date.

II. Whether the deceased, Joseph Staffa, was required to file New York State personal income tax returns for 1970 through 1973.

III. Whether currency in the amount of \$16,125.00 and two savings account passbooks showing deposits adding up to \$12,137.50 on January 6, 1970 discovered in a safety deposit box maintained by the deceased, together with the results of a field audit showing that the deceased had insufficient funds for living

expenses in years at issue are taxable.

FINDINGS OF FACT

1. The deceased, Joseph Staffa, resided at 423 East 114th Street, New York City at the time of his death on May 1, 1973.
2. The Income Tax Bureau had no records of deceased, Joseph Staffa, filing New York State income tax returns for 1970 through 1973.
3. The deceased, Joseph Staffa, maintained a safety deposit box at Manufacturers Hanover Trust Company. Following the death of Joseph Staffa, the safety deposit box was opened on October 10, 1973. The box contained \$16,125.00 in currency, two savings account passbooks with balances of \$11,000.00 each, together with miscellaneous costume jewelry having an approximate value of five hundred dollars and other miscellaneous personal papers of no monetary value.
4. The savings bank books showed on January 6, 1970 a deposit of \$11,137.50 to Harlem Savings Bank and a \$1,000.00 deposit to Union Dime Savings Bank. The passbooks reported interest income of \$1,125.32, \$1,132.08, \$1,147.59 and \$573.00, respectively for 1970 through 1973. At least once a year all interest was withdrawn from the accounts.
5. The Income Tax Bureau concluded that the deceased had additional cash requirements of \$5,000.00 each year other than 1973, the year of Joseph Staffa's death (May 1, 1973) when the requirements were \$2,500.00 for cost of living expenses. There was no indication of how these amounts were determined by the Bureau.
6. On January 26, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner Joseph Staffa (deceased), c/o Frances La Vista, Administratrix, on the grounds that as a result of an audit, the following adjustments have been made:

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
Unexplained deposits deemed additional income	\$12,137.50	--	--	--
Unreported interest income	1,125.32	\$1,132.08	\$ 447.59	\$ 573.00
Additional funds needed for living expenses	5,000.00	5,000.00	5,000.00	2,500.00
Cash found in vault deemed unreported income	--	--	--	16,125.00
New York adjusted gross income	\$18,262.82	\$6,132.08	\$6,147.59	\$19,198.00
Less standard deduction	1,000.00	797.70	1,000.00	2,000.00
Less exemption	1,250.00	1,300.00	1,300.00	1,300.00
Net adjustment	\$16,012.82	\$4,034.38	\$3,847.59	\$15,898.00

Accordingly, the Income Tax Bureau issued a Notice of Deficiency on January 26, 1976 in the amount of \$2,147.94 in personal income tax, plus \$451.39 in interest, for a total due of \$2,599.33.

7. Joseph Staffa was 72 years of age at the time of his death and had been a retired salesman for approximately seven years. The decedent had a social security number but there is no information as to whether he was receiving benefits from social security or the type of life style he lived during the years at issue.

8. The Report of Box Opener states there were no access records nor does the file indicate how long the decedent had been renting the safety deposit box. The report failed to disclose the age or condition of the currency found in the safety deposit box.

9. Petitioner's representative argued that the mere finding of cash or deposits made to savings accounts where there are no other facts or reasonable inferences are not proper grounds, whereby the Income Tax Bureau can impose additional taxes.

10. Petitioner's representative also argued that the Income Tax Bureau's assumption that Joseph Staffa had taxable income is unreasonable. He further argued that the Income Tax Bureau was at an advantage because the decedent, Joseph Staffa, was unable to give an explanation for the existence of certain monies.

CONCLUSIONS OF LAW

A. That petitioner has not sustained the burden of proof imposed by section 689(e) of the Tax Law, which requires him to establish that Joseph Staffa, deceased, did, in fact, file New York State resident income tax returns. Therefore, a tax may be assessed at any time in accordance with section 683 of the Tax Law.

B. That the mere existence of cash or property in a safety deposit box does not of itself imply that a taxpayer received taxable income which was not reported on his returns. While a taxpayer at times may have a duty to explain such deposits, in this case no explanation is possible. It is, furthermore, entirely likely, since petitioner was retired, that the sums here involved were savings out of reported income in earlier years.

C. That the Income Tax Bureau failed to use any of the standard audit techniques and procedures which should be utilized in determining tax liability under such circumstances.

D. That the petition of the Estate of Joseph Staffa is granted and the Notice of Deficiency issued January 26, 1976 is cancelled.

DATED: Albany, New York

APR 11 1980

STATE OF NEW YORK

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER