

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel and Rose Stoller :
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

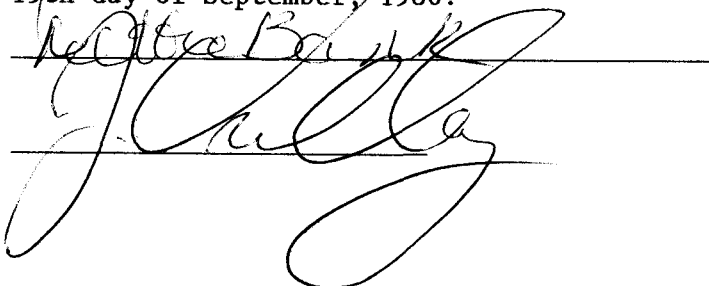
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Daniel and Rose Stoller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel and Rose Stoller
269-01 Grand Central Pkwy.
Floral Park, NY 11005

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
19th day of September, 1980.



STATE OF NEW YORK
STATE TAX COMMISSION

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Daniel and Rose Stoller :

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for Redetermination of a Deficiency or a Revision :

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Personal Income Tax :

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for the Year 1975. :

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 19th day of September, 1980, he served the within notice of Decision by certified mail upon Ralph Glickman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

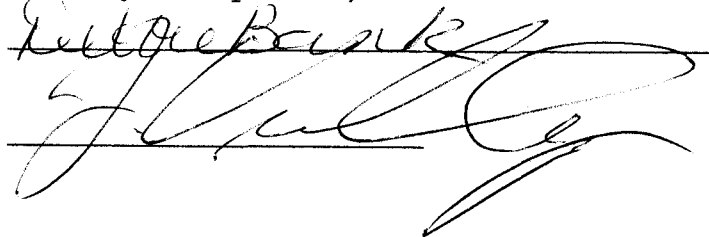
Mr. Ralph Glickman
1 Penn Plaza
New York, NY 10001

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

19th day of September, 1980.



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

September 19, 1980

Daniel and Rose Stoller
269-01 Grand Central Pkwy.
Floral Park, NY 11005

Dear Mr. & Mrs. Stoller:

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
Ralph Glickman
1 Penn Plaza
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DANIEL STOLLER and ROSE STOLLER	:	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, Daniel Stoller and Rose Stoller, 269-01 Grand Central Parkway, Floral Park, New York 11005, 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. 19690).

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 March 11, 1980 at 1:15 P.M. Petitioners appeared by Ralph Glickman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners can provide sufficient evidence to establish the allowance of four exemptions, and interest expenses.

FINDINGS OF FACT

1. Petitioners, Daniel Stoller and Rose Stoller, timely filed a joint New York State Income Tax Resident Return for the year 1975, on which nine exemptions and New York itemized deductions of \$10,542.00 were reported. Petitioner Daniel Stoller died on August 2, 1976.

2. On May 23, 1977, the Audit Division issued a Notice of Deficiency in the sum of \$1,039.68, along with an explanatory Statement of Audit Changes on

which four exemptions and interest expenses of \$5,542.00 were disallowed for lack of evidence. The disallowed exemptions at issue are petitioners' three grandchildren and daughter-in-law.

3. In support of the exemptions at issue, a notarized statement was submitted signed by Steven Stoller, which contended that:

- (a) Steven Stoller, his three children and wife resided in Canada during 1975, at a home owned by petitioner Daniel Stoller.
- (b) Steven Stoller was an artist and did not sell any paintings or earn any income during 1975.
- (c) Steven Stoller received \$5,000.00 in cash during 1975 from his father for support of himself, his wife and his children.

Sworn oral testimony was not rendered and documentary evidence was not submitted, supporting the contentions of the notarized statement.

4. The interest expenses at issue were itemized as follows:

Home Mortgage	\$1,745.00
Insurance Loans	911.00
Manufacturer's Hanover	514.00
H. Tschernikow	1,454.00
Master Charge	238.00
Credit Union	680.00
Total Interest	<u>\$5,542.00</u>

Based on documentary evidence submitted, the Audit Division conceded interest expenses of \$1,745.00 (Home Mortgage) and \$680.00 (Credit Union).

5. In support of the remaining interest expense items at issue, the following was submitted:

- (a) a photocopy of an unnotarized statement from Helen Krutlewitsch for \$1,487.50 in interest paid by petitioner Daniel Stoller
- (b) photocopies of two checks payable to Helen Tschernikow for \$765.00 and \$653.60

- (c) photocopies of three checks payable to the Guardian Life Company for \$806.00, \$1,194.00 and \$833.33.
- (d) a notation on the bottom of a letter requesting verification of a \$225.00 interest payment, which stated, "This amount seems appropriate for the 1975 income tax return".

Evidence establishing the terms and conditions of the contended loans, or a bona fide creditor-debtor relationship was not submitted.

CONCLUSIONS OF LAW

A. That tax deductions and exemptions depend upon clear statutory provisions, and the burden is upon the taxpayer to establish a right to them. (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193; Matter Central Office Alarm Co., Inc. v. State Tax Commission, 58 A.D.2d 162).

B. That the petition of Daniel Stoller and Rose Stoller is granted to the extent conceded by the Audit Division; to wit, interest expenses in the sum of \$2,425.00 (Finding of Fact #4).

C. That petitioners, Daniel Stoller and Rose Stoller, have failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that they were entitled, within the purview of the Internal Revenue Code, and Article 22 of the Tax Law, to deductions and exemptions greater than those granted by paragraph B of this decision.

D. That the Audit Division is hereby directed to modify the Notice of Deficiency issued May 23, 1977, in accordance with paragraph B of this decision; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 19 1980


PRESIDENT


COMMISSIONER


COMMISSIONER