

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Stanley Tiger

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 1974. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Stanley Tiger, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

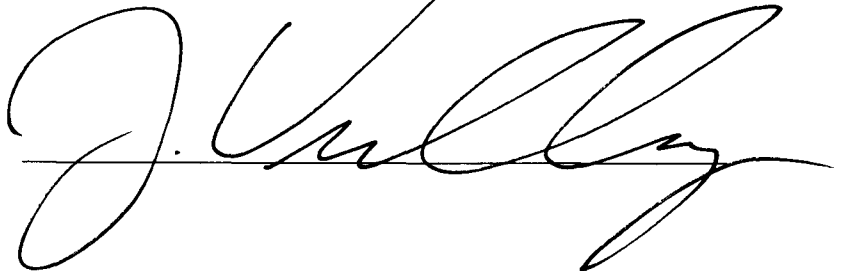
Stanley Tiger
989 Old Town Rd.
Coram, NY 11776

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
18th day of July, 1980.

Sarah A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Stanley Tiger

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 1974. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Thomas J. Watson 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. Thomas J. Watson
339 S. Lenox Ave.
Patchogue, NY 11772

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
18th day of July, 1980.

Richard A. Bank

J. Vredenburg

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

July 18, 1980

Stanley Tiger
989 Old Town Rd.
Coram, NY 11776

Dear Mr. Tiger:

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
Thomas J. Watson
339 S. Lenox Ave.
Patchogue, NY 11772
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STANLEY TIGER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1974.	:	

Petitioner, Stanley Tiger, 989 Old Town Road, Coram, New York 11727, 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 1974 (File No. 20110).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 7, 1980 at 2:45 P.M. Petitioner appeared by Thomas J. Watson, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUES

- I. Whether petitioner incurred a casualty loss arising from theft, and if so, the amount of loss sustained.
- II. Whether payments received by petitioner from his employer during absence from work constituted "sick pay".
- III. Whether petitioner's travel expenses were primarily for the purpose of maintaining or improving his skill as a teacher.

FINDINGS OF FACT

1. Petitioner, Stanley Tiger, and his wife Judy Tiger, timely filed a New York State Combined Income Tax Return for 1974, on which he deducted a casualty loss of \$1,650.00; sick pay exclusion of \$1,620.00 and education expense of \$4,793.00.

2. On May 23, 1977, the Audit Division issued a Notice of Deficiency together with a Statement of Audit Changes for subject year, against petitioner imposing additional personal income tax of \$544.69, plus interest. Said Notice was issued on the grounds that petitioner failed to establish the fair market value of the items reported stolen; that the payment in lieu of wages to a teacher on Sabbatical leave for the restoration of health was disallowed as a sick pay exclusion since petitioner did extensive travelling during his Sabbatical leave and was not, in fact, incapacitated; that travel expenses claimed as education expense were disallowed since petitioner did not show that the trip was primarily for educational reasons or that there was any relationship between the travel and petitioner's teaching position.

3. While petitioner's wife was on vacation in Acapulco, Mexico, her hotel room was burglarized, and her jewelry, which she acquired by gift, was stolen. She made a formal report of theft to the Acapulco Police Department, but the jewelry was not recovered. A claim of loss was made by petitioner to his insurance carriers under his homeowner's policy. The carrier paid petitioner \$250.00, without proof of loss, which was the maximum allowance under the policy, as petitioner failed to carry any insurance rider for the separate items of jewelry. Petitioner's value of the stolen jewelry was based on a schedule which he prepared, together with photograph's which had previously been taken, showing the stolen items worn by his wife. The schedule, photographs and a description were submitted to a jeweler for appraisal.

4. Petitioner was granted a Sabbatical leave of absence from the City School District of New York, Office of Personnel, for the restoration of health. The Sabbatical leave was granted on the basis of medical information submitted by petitioner's personal physician.

In December, 1973, and again in June, 1974, petitioner was admitted to the hospital. For the portion of the tax year herein involved that petitioner was on sabbatical leave for restoration of health, he was incapacitated and unable to teach.

While on Sabbatical leave, petitioner travelled extensively throughout the United States and Asia. Said trip was taken against the advice and consent of petitioner's personal physician.

5. Petitioner began his career as a high school social studies teacher in 1956. As a social studies teacher, petitioner was required to teach a number of varied courses. During the year in issue, petitioner travelled throughout the United States and Asia. Petitioner contended that he gathered material from trips which he used for classroom discussions and displays. He also contended that he broadened his knowledge which greatly enhanced his ability and effectiveness as a teacher. Previous to his travels, petitioner also deemed himself an effective teacher for approximately twenty-five years without having travelled. Petitioner also indicated that at his school there are nineteen other social studies teachers; that of his own knowledge and belief, he does not know whether any of them did any extensive travelling for the purpose of broadening their knowledge.

CONCLUSIONS OF LAW

A. That any loss arising from theft is allowed as a deduction, providing the petitioner establishes that the property was actually stolen, and if so, the amount of the loss. Petitioner has established the fact that a theft has actually occurred. However, petitioner has failed to produce any evidence from which the value of the gifted property or its cost basis can be determined. Since the requirement to prove cost is an essential element of petitioner's case, and no such proof being presented, the deduction is disallowed (H.W. Zeliff, 17 T.C.M. 622; M.A. Sussell, 25 T.C.M. 1241 and J.E. Wood, 30 T.C.M. 525).

B. That Sabbatical leave granted to petitioner was for the purpose of restoration of health and is, therefore, excluded from gross income, pursuant to section 105(d) of the Internal Revenue Code, subject to limitation imposed thereunder.

That petitioner did extensive travelling, while on Sabbatical leave, against the advise of his personal physician, would not change the fact that he was unable to work because of sickness.

That the deduction is inapplicable to the amount paid to petitioner by his employer when the school is closed for summer vacation and for a legal holiday which is neither a normal working day for petitioner nor a day on which it is required to hold himself available for a call to work. Accordingly, the Audit Division is directed to recompute and allow as a proper deduction a sick pay exclusion, removing from the recomputation any amounts received by petitioner when the school was closed for vacation and for legal holidays.

C. That petitioner's expenses for travel are not deductible as educational expense as he failed to establish that the trip was undertaken primarily for the purpose of maintaining or improving his skill (Ephraim Cross v. U.S. 250 F. Supp. 609; 613 (S.D. N.Y. 1966), on remand from 336 F. 2d 431 (C.A. 2, 1964) which had reversed 222 F. Supp. 157 (S.D. N.Y. 1963) 66-1 USTC 9218). That the travel was not directly related to the duties of petitioner in his employment (Treas. Reg. 1.162-5).

D. That the petition of Stanley Tiger is granted to the extent provided for in Conclusion of Law "B". That the Audit Division is hereby directed to modify the Notice of Deficiency dated May 23, 1977, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUL 18 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER