

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Frank N. Jr. & Virginia Volz :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Frank N. Jr. & Virginia Volz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank N. Jr. & Virginia Volz
1537 13th St.
West Babylon, NY 11704

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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
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for Redetermination of a Deficiency or a Revision :
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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 16th day of May, 1980, he served the within notice of Decision by certified mail upon H. David Dryce 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. H. David Dryce
1241 Round Swamp Rd.
Old Bethpage, NY 11804

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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Frank N. Jr. & Virginia Volz
1537 13th St.
West Babylon, NY 11704

Dear Mr. & Mrs. Volz:

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
H. David Dryce
1241 Round Swamp Rd.
Old Bethpage, NY 11804
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK M. VOLZ, JR. and VIRGINIA VOLZ	:	DECISION
for Redetermination of a Deficiency or for Re-	:	
fund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioners, Frank M. Volz, Jr. and Virginia Volz, 1537 13th Street, West Babylon, New York 11704, 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. 19385).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 28, 1979 at 1:15 P.M. Petitioners appeared by H. David Dryce, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioners properly deducted a casualty loss of \$2,780.00 on their New York State income tax resident return for 1974.

FINDINGS OF FACT

1. Petitioners, Frank M. Volz, Jr. and Virginia Volz, timely filed a New York State Income Tax Resident Return for 1974, on which they claimed a casualty loss of \$2,780.00.

2. On May 23, 1976, the Audit Division issued a Statement of Audit Changes to petitioners which adjusted the amount of the casualty loss to \$1,177.00 on the grounds that petitioners were unable to substantiate the value of certain items stolen. Accordingly, a Notice of Deficiency was issued against petitioners on May 23, 1977, for personal income tax of \$107.96 plus interest of \$19.31 for a total of \$127.27.

3. In February, 1974, petitioners' personal residence was burglarized. The burglary was reported to the Suffolk County Police Department and to petitioners' insurance company along with a schedule of the items stolen. Petitioners determined their casualty loss deduction as follows:

Total Burglary Loss	\$7,952
Less: Insurance Reimbursement	5,072
Net Loss	<u>2,880</u>
Less: \$100 Limitation	100
Casualty Loss	<u>\$2,780</u>

4. The Audit Division allowed \$1,177.00 of the casualty loss claimed since petitioner was not reimbursed for a fur coat and was reimbursed only \$250.00 for jewelry that the insurance company placed a much higher value on.

5. Petitioners substantiated that a 14k gold pendant watch had a value of \$750.00 at the time of the burglary. On audit, the Audit Division allowed \$420.00 for this item in computing the casualty loss. Petitioners offered no substantial evidence to establish that the remaining items stolen had a value greater than the amount allowed by the Audit Division.

CONCLUSIONS OF LAW

A. That in accordance with Finding of Fact "5", petitioners' casualty loss deduction for 1974 is increased from \$1,177.00 to \$1,507.00; that petitioners have otherwise failed to sustain the burden of proof required by section 689(e) of the Tax Law.

B. That the petition of Frank M. Volz, Jr. and Virginia Volz is granted to the extent of the casualty loss indicated in Conclusion of Law "A"; that the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued May 23, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER