

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

John J. Abbott :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon John J. Abbott, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John J. Abbott
40-72 Denman St.
Elmhurst, NY 11375

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
20th day of February, 1981.

Carmie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

John J. Abbott

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Sebastian Ragusa the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

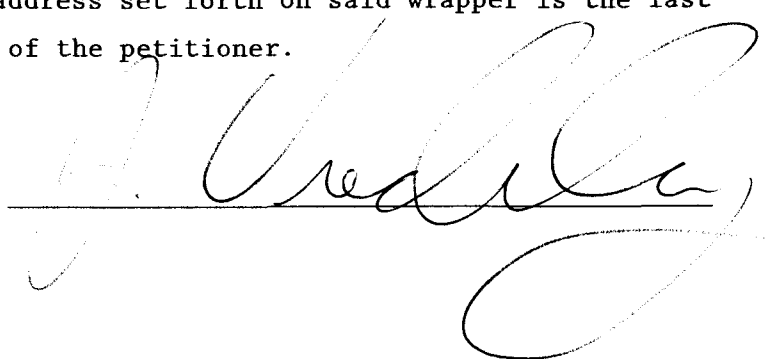
Sebastian Ragusa
120 Bethpage Rd.
Hicksville, NY 11801

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
20th day of February, 1981.

Gunnar A. Hagelund



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

February 20, 1981

John J. Abbott
40-72 Denman St.
Elmhurst, NY 11375

Dear Mr. Abbott:

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
Sebastian Ragusa
120 Bethpage Rd.
Hicksville, NY 11801
Taxing Bureau's Representative

STATE TAX COMMISSION

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

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 June 27, 1980 at 10:45 A.M. Petitioner, John J. Abbott, appeared with Sebastian Ragusa, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

Whether petitioner is entitled to a rental loss for the year 1974.

1. Petitioner, John J. Abbott, timely filed a New York State Income Tax Return for the year 1974, on which he reported employee business expenses of \$2,195.00, entertainment expenses of \$615.00 and a rental loss of \$3,267.00.

2. On November 16, 1976, the Audit Division issued a Report of Audit Changes for the year 1974 on which petitioner's New York taxable income was increased by \$600.00, resulting in an additional personal income tax due of \$83.66, plus interest of \$11.03. Petitioner argued that the Report of Audit Changes was a result of an audit conducted by the Audit Division for the year 1974 and that the auditor had accepted the deductibility of the rental loss at issue.

3. On January 28, 1977, the Audit Division issued a Statement of Audit Changes for the year 1974, increasing petitioner's New York taxable income by \$3,667.00 as follows:

<u>Item</u>	<u>Per Return</u>	<u>Corrected</u>	<u>Adjustment</u>
Employee Business Expense	\$2,195.00	\$1,995.00	\$ 200.00
Misc. Ded. - entertainment	615.00	415.00	200.00
Rental loss	3,267.00	-0-	3,267.00

The Statement of Audit Changes indicated that the rental loss was disallowed "under IRS section 183 as an activity not engaged in for profit".

4. On May 23, 1977, the Audit Division issued a Notice of Deficiency for the year 1974 for \$530.40, plus interest of \$94.86, based on the aforementioned Statement of Audit Changes.

5. In April 1971, petitioner purchased a one-family house in Jamesport, New York, in anticipation of an economic expansion in the area. The county seat had been recently moved to nearby Riverhead and a nuclear facility was under construction in Jamesport. Accordingly, petitioner anticipated that the demand for living quarters would increase dramatically and purchased the property for rental purposes.

6. Petitioner, John J. Abbott, attempted to rent the property during the year 1974 by advertising in periodicals and by listing it for rent with a local real estate agent. Petitioner was able to rent the property for a period of four months for \$1,850.00 during the year 1974.

7. During the year 1972, petitioner installed heating facilities in the home in Jamesport, New York to make it available for rent during the winter months. Petitioner also obtained and maintained "renter's" insurance on the property at issue.

8. The property at issue was available for rent during the entire calendar year 1974 and was never used by petitioner or his family for personal or recreational purposes.

9. Although petitioner testified that the sole reason for purchasing the property in Jamesport, New York was for investment and income producing purposes, he incurred rental losses from the date of purchase through and including the year 1974.

CONCLUSIONS OF LAW

A. That petitioner's intended purpose at the time of purchase, coupled with the fact that the property was never used for personal purposes, and that he actively sought to rent it, clearly demonstrated petitioner's profit motive (Clancy, T.C. Memo. 1978-85).

B. That petitioner, John J. Abbott, is entitled to a rental loss of \$3,267.00 for the year 1974, in accordance with the meaning and intent of sections 165(c)(2) and 212 of the Internal Revenue Code and Article 22 of the Tax Law.

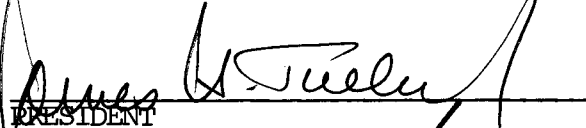
C. That the petition of John J. Abbott is granted to the extent provided in paragraph "B" of this decision.

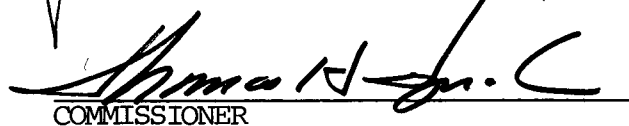
D. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued May 23, 1977; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER