

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Amedeo Comotto

:

:

: 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 1972

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Amedeo Comotto, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Amedeo Comotto
407 19 Avenue N
Hollywood, FL 33020

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
10th day of April, 1981.

Carrie A. Hagelund

Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AMEDEO COMOTTO	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioner, Amedeo Comotto, 407-19 Avenue N, Hollywood, Florida 33020, 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 1972 (File No. 14275).

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 July 21, 1980 at 10:45 A.M. Petitioner appeared by Herbert Treibman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner's net rental income and a capital gain on the sale of rental property was properly substantiated by available evidence.

FINDINGS OF FACT

1. Petitioner, Amedeo Comotto, filed a New York State Income Tax Resident Return for the year 1972, on which net rental income of \$111.44, and a net capital gain of \$4,908.75 were reported.

2. On January 26, 1976, the Audit Division issued a Notice of Deficiency for \$679.53, plus interest, for the year 1972, along with an explanatory Statement of Audit Changes, on which;

- (a) Net rental income of \$111.44 was increased to \$1,250.76.
- (b) Reportable capital gains of \$4,908.75 was increased to \$7,837.50, along with a 20 percent modification required under Article 22 of the Tax Law.
- (c) The standard deduction was allowed in lieu of New York itemized deductions claimed.

3. Petitioner, Amedeo Comotto, owned a converted three family house maintained by him for rental purposes. Petitioner reported rental expenses of \$3,936.52 for the year 1972. Upon audit, the Audit Division reduced the rental expenses to \$2,824.20 based on evidence and information provided by petitioner. The documentary evidence establishing the full amount of the rental expenses claimed was not available. However, petitioner's representative offered sworn testimony that he examined the documentary evidence and that he prepared the returns from it.

4. Petitioner sold the rental property at issue on December 15, 1972 on the installment basis and reported a net capital gain of \$4,908.75, for the year 1972.

Upon audit, the Audit Division increased the net capital gain to \$7,837.50 by decreasing the adjusted basis of the rental property from \$21,871.56 to \$1,761.91. Although petitioner disputed this decrease, no documentary evidence was submitted indicating a higher basis.

5. Petitioner contended that the depreciation schedule submitted with his tax return, which indicated the cost basis and accumulated depreciation, was incorrect.

CONCLUSIONS OF LAW

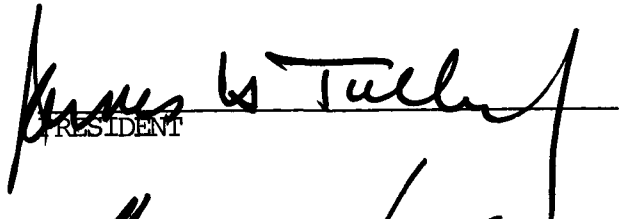
A. That petitioner, Amedeo Comotto, has failed to sustain the burden of proof required by section 689(e) of the Tax Law, in establishing that the rental expenses and the adjusted basis of the rental property at issue were higher than that allowed by the Audit Division.

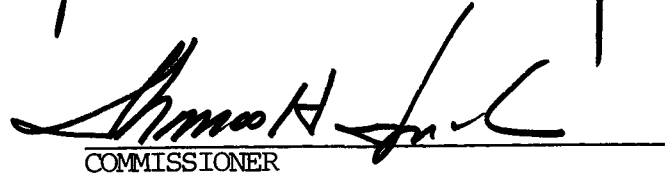
B. That the petition of Amedeo Comotto is denied and the Notice of Deficiency issued January 26, 1976, is sustained, together with such additional interest as may be lawfully owing.

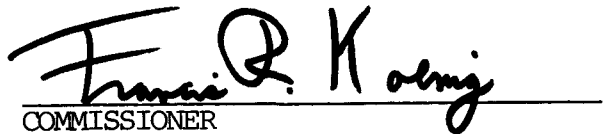
DATED: Albany, New York

STATE TAX COMMISSION

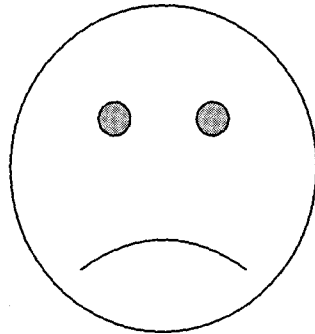
APR 10 1981


PRESIDENT


COMMISSIONER


COMMISSIONER

CORRECTION FOLLOWS



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Amedeo Comotto

:

:

: 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 1972

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Amedeo Comotto, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Amedeo Comotto
407 19 Avenue N
Hollywood, FL 33020

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
10th day of April, 1981.

Carrie A. Hagedorn

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Amedeo Comotto :
: 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 1972 :

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Herbert Treibman 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. Herbert Treibman
224-69 76th Rd.
Bayside, NY 11364

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
10th day of April, 1981.

Annie A. Hagelund

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

April 10, 1981

Amedeo Comotto
407 19 Avenue N
Hollywood, FL 33020

Dear Mr. Comotto:

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
Herbert Treibman
224-69 76th Rd.
Bayside, NY 11364
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AMEDEO COMOTTO	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioner, Amedeo Comotto, 407-19 Avenue N, Hollywood, Florida 33020, 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 1972 (File No. 14275).

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 July 21, 1980 at 10:45 A.M. Petitioner appeared by Herbert Treibman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner's net rental income and a capital gain on the sale of rental property was properly substantiated by available evidence.

FINDINGS OF FACT

1. Petitioner, Amedeo Comotto, filed a New York State Income Tax Resident Return for the year 1972, on which net rental income of \$111.44, and a net capital gain of \$4,908.75 were reported.

2. On January 26, 1976, the Audit Division issued a Notice of Deficiency for \$679.53, plus interest, for the year 1972, along with an explanatory Statement of Audit Changes, on which;

- (a) Net rental income of \$111.44 was increased to \$1,250.76.
- (b) Reportable capital gains of \$4,908.75 was increased to \$7,837.50, along with a 20 percent modification required under Article 22 of the Tax Law.
- (c) The standard deduction was allowed in lieu of New York itemized deductions claimed.

3. Petitioner, Amedeo Comotto, owned a converted three family house maintained by him for rental purposes. Petitioner reported rental expenses of \$3,936.52 for the year 1972. Upon audit, the Audit Division reduced the rental expenses to \$2,824.20 based on evidence and information provided by petitioner. The documentary evidence establishing the full amount of the rental expenses claimed was not available. However, petitioner's representative offered sworn testimony that he examined the documentary evidence and that he prepared the returns from it.

4. Petitioner sold the rental property at issue on December 15, 1972 on the installment basis and reported a net capital gain of \$4,908.75, for the year 1972.

Upon audit, the Audit Division increased the net capital gain to \$7,837.50 by decreasing the adjusted basis of the rental property from \$21,871.56 to \$1,761.91. Although petitioner disputed this decrease, no documentary evidence was submitted indicating a higher basis.

5. Petitioner contended that the depreciation schedule submitted with his tax return, which indicated the cost basis and accumulated depreciation, was incorrect.

CONCLUSIONS OF LAW

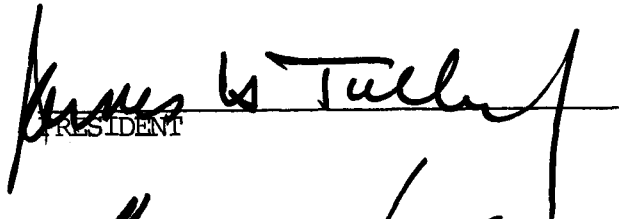
A. That petitioner, Amedeo Comotto, has failed to sustain the burden of proof required by section 689(e) of the Tax Law, in establishing that the rental expenses and the adjusted basis of the rental property at issue were higher than that allowed by the Audit Division.

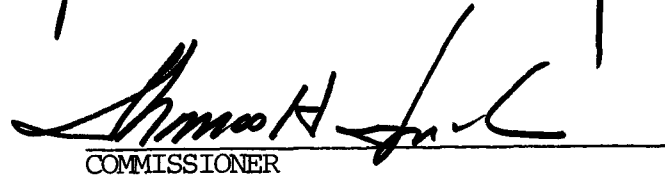
B. That the petition of Amedeo Comotto is denied and the Notice of Deficiency issued January 26, 1976, is sustained, together with such additional interest as may be lawfully owing.

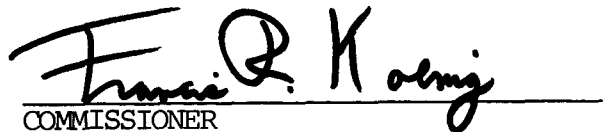
DATED: Albany, New York

STATE TAX COMMISSION

APR 10 1981


PRESIDENT


COMMISSIONER


COMMISSIONER