

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Benjamin & Zofia Griffin :

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 1968. :

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 March, 1981, he served the within notice of Decision by certified mail upon Benjamin & Zofia Griffin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Benjamin & Zofia Griffin
69-70 180th St.
Flushing, NY 11365

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 March, 1981.

Gennie A. Hagelund

[Signature]

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

March 18, 1981

Benjamin & Zofia Griffin
69-70 180th St.
Flushing, NY 11365

Dear Mr. & Mrs. Griffin:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BENJAMIN GRIFFEN and ZOFIA GRIFFEN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1968.	:	

Petitioners, Benjamin Griffen and Zofia Griffen, 69-70 180th Street, Flushing, New York, 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 1968 (File No. 14240).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 19, 1978. Petitioner Benjamin Griffen appeared pro se and for petitioner Zofia Griffen. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners are entitled to a foreign expropriation loss and, if so, in what amount.

FINDINGS OF FACT

1. Petitioners, Benjamin Griffen and Zofia Griffen, filed timely New York State income tax returns for 1968.
2. A Notice of Deficiency and a Statement of Audit Changes were issued against petitioners for 1968, for income taxes due of \$1,720.53, plus \$308.44 in interest, for a total of \$2,028.97.
3. Petitioners subsequently filed a timely petition for revision of these determinations.

4. Following the demise of his father and two of his brothers, Benjamin Griffen owned a one-third interest in an apartment building and accompanying land in Warsaw, Poland.

5. Benjamin Griffen left Poland before World War II and came to the United States.

6. The Government of Poland expropriated the land accompanying the apartment building no later than 1947.

7. Two of Benjamin Griffen's brothers were in Warsaw, Poland after World War II. One brother left Poland no later than 1949 and the other brother left Poland no later than 1951. At the time Benjamin Griffen's brothers left Poland, an agent was left in charge of the property. This agent collected rent and placed the money in an account to be expended in accordance with the direction of one of petitioner's brothers. Neither Benjamin Griffen nor his brothers received the income derived from the apartment building after his brothers left Poland.

8. Benjamin Griffen learned that he could be reimbursed for his loss when the Foreign Claims Settlement Commission made public announcements to register. This occurred no earlier than 1959.

9. Benjamin Griffen pursued his rights before the Foreign Claims Settlement Commission. In a decision dated February 23, 1966 the Foreign Claims Settlement Commission rendered a final decision which found that Benjamin Griffen owned a one-third interest in a certain parcel of land with an apartment building. The Commission also found that the value of Benjamin Griffen's interest in the subject property was \$50,000.00 and that the property was expropriated on September 28, 1953.

10. Mr. Griffen did recover some of his losses through the Commission. Although he testified that he learned in 1968 that he would not recover about

\$32,000.00 of the loss on the value of the realty in Warsaw, the document encaptioned "NOTICE TO CLAIMANTS (POLISH CLAIMS) Third Payment on Awards" reveals that Mr. Griffen was notified of this information no later than 1967.

11. Mr. Griffen claimed a deduction for this loss on his Federal and State income tax returns for 1968.

CONCLUSIONS OF LAW

A. That petitioner is entitled to take the same loss deductions on his New York income tax return that he is permitted to take on his Federal income tax return (subdivision a of section 615 of the Tax Law).

B. That foreign expropriations are a deductible loss if the loss is incurred in a trade, business, or any transaction entered into for profit, though not connected with a trade or business (paragraphs 1 and 2 of subdivision c of section 165 of the Internal Revenue Code of 1954).

C. That under section 165(a) of the Tax Law, a deduction for a loss is allowed only in the taxable year in which the loss arises (26 CFR §1.165-1(d)(1)). That a loss arising from the expropriation of land occurs when the taxpayer loses the relevant incidents of ownership (see Korn v. Commissioner, 524 F.2d 888, 890; Fuchs v. Commissioner, 413 F.2d 503, 507).

D. That 26 CFR §1.165-1(d)(2)(i) provides:

"If a casualty or other event occurs which may result in a loss and, in the year of such casualty or event, there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss with respect to which reimbursement may be received is sustained, for purposes of section 165, until it can be ascertained with reasonable certainty whether or not such reimbursement will be received. Whether a reasonable prospect of recovery exists with respect to a claim for reimbursement of a loss is a question of fact to be determined upon an examination of all facts and circumstances. Whether or not such reimbursement will be received may be ascertained with reasonable certainty, for example, by a settlement of the claim, by an adjudication of the claim, or by an abandonment of the claim. When a taxpayer claims that the taxable year in which a loss is sustained is fixed by his abandonment of the claim for reimbursement, he must be able to produce objective evidence of his having abandoned the claim, such as the execution of a release."

E. That "[w]hether 'a reasonable prospect of recovery exists with respect to a claim for reimbursement' is a question of fact and the burden of establishing that fact is on the taxpayer. (citation omitted)" (Fuchs v. Commissioner, 413 F.2d 503, 507, supra; see Korn v. Commissioner, 524 F.2d 888, 890, supra).

F. That Benjamin Griffen lost the relevant incidents of ownership no later than September 28, 1953 and that on this date he did not have a "reasonable prospect of recovery." (Korn v. Commissioner, 524 F.2d 888, 890, supra; Fuchs v. Commissioner, 413 F.2d 503, 507, supra).

G. That in view of the foregoing it is unnecessary to determine whether the amount of the deduction was proper.

H. That the petition of Benjamin Griffen and Zofia Griffen is denied and the Notice of Deficiency issued for 1968 is sustained.

DATED: Albany, New York

MAR 18 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER