

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
F. David Hart :
and Carol A. Hart :
: 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 Years :
1970 & 1971. :

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon F. David Hart and Carol A. Hart the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

F. David Hart
and Carol A. Hart
111 Fox Hedge Rd.
Saddle River, NJ 07458

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
30th day of October, 1981.

Annie A. Hagelund

J. Vredenburg

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

October 30, 1981

F. David Hart
and Carol A. Hart
111 Fox Hedge Rd.
Saddle River, NJ 07458

Dear Mr. & Mrs. Hart:

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
F. DAVID HART and CAROL A. HART
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Years 1970 & 1971

DECISION

Petitioners, F. David Hart and Carol A. Hart, 111 Fox Hedge Road, Saddle River, New Jersey 07458, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971 (File No. 12106).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on December 9, 1980 at 1:15 P.M. Petitioner F. David Hart appeared pro se and for his wife. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioners, for the year 1970, are entitled to deduct a casualty loss arising from the theft of household goods.

II. Whether petitioners must include in 1971 total New York income the sum of \$3,688.66, which amount represents the insurance premium paid by F. David Hart's employer to cover a move of petitioners' household goods.

FINDINGS OF FACT

1. Petitioners, F. David Hart and Carol A. Hart, simultaneously filed 1970 and 1971 New York State nonresident income tax returns on April 14, 1972. The 1970 return showed a refund due petitioners of \$631.00, while the 1971

return showed a balance due of \$404.10. The balance due of \$404.10 for 1971 was not paid by petitioners at the time of filing their 1971 return.

2. On March 31, 1975 the Audit Division issued a Notice of Deficiency against petitioners wherein the tax reported due for 1971 was increased from \$404.10 to \$735.88 and the refund claimed by petitioners for the year 1970 was reduced from \$631.00 to \$200.81, leaving a net tax due of \$535.07, plus interest.

3. The above mentioned Notice of Deficiency has its basis in an explanatory Statement of Audit Changes originally issued to petitioners on October 15, 1974. Said Statement of Audit Changes proposed to increase 1971 total New York income by \$3,688.66, which amount represents the insurance premium paid by F. David Hart's employer to a third party for insurance coverage on a move of petitioners' household goods. The refund claimed for 1970 was reduced based on the Audit Division's disallowance of a \$6,000.00 casualty loss claimed by petitioners due to the theft of household goods moved in 1970. Also, since the adjustment for 1971 included the cost of the insurance premium in gross income in that year, said amount was effectively removed by the Audit Division from 1970 gross income by increasing the 1970 moving expense adjustment by \$3,689.00, from \$1,800.00 to \$5,489.00. Other adjustments were made to petitioners' 1970 return which were not contested and are therefore not at issue.

4. Petitioner F. David Hart was an IBM employee during the years in question. In mid 1970 he and his family moved from Beirut, Lebanon to New Jersey. Petitioners utilized the services of a moving firm to both pack and transport their personal belongings from the Lebanon residence to the New Jersey residence. Upon arrival of their household goods petitioners discovered that numerous items were missing and a list, consisting of 188 missing items,

was compiled by petitioners showing the item missing and its approximate cost or value and date of purchase or gift.

5. A claim was submitted to petitioners' insurance carrier for reimbursement of the 188 missing items, which petitioners had valued at \$17,736.00. After much negotiation with the insurance carrier, a compromised settlement of \$7,500.00 was reached. Petitioners computed the \$6,000.00 casualty loss by placing a depreciated value of \$13,500.00 on the missing items (\$17,736.00 estimated value less approximately 25%) minus the \$7,500.00 insurance reimbursement. This loss was disallowed by the Audit Division on the grounds that petitioners "...have not shown that the fair market value of this property immediately before the casualty was in excess of the amount reimbursed".

6. Total wages shown on petitioner F. David Hart's 1971 wage and tax statement amounted to \$33,351.16. Included in this amount was the \$3,688.66 insurance premium paid by IBM in 1970 to a third party for insurance coverage of petitioners move from Lebanon to New Jersey. Petitioners, in computing 1971 Federal adjusted gross income and total New York income, subtracted the \$3,688.66 insurance premium from 1971 wages as they had included said amount in their 1970 return. The \$3,688.66 insurance premium was reported on the 1971 wage and tax statement due to internal processing delays on the part of IBM. Petitioner F. David Hart's Statement of Earnings and Deductions for the period ending April 30, 1971 indicates that the sum of \$3,688.66 was included in gross wages for said period and that this same amount was deducted by IBM, as a miscellaneous deduction, to arrive at net pay.

7. In computing their moving expense adjustment for the year 1970, petitioners included in expenses on line 1 of Federal Form 3903 the insurance premium of \$3,688.66. The \$3,688.66 was also reported as a reimbursement on

line 12 of Form 3903. Petitioners argue that both the expense and reimbursement of the insurance premium was properly reported on their 1970 return and that said insurance premium is not includable in 1971 gross income.

CONCLUSIONS OF LAW

A. That petitioners have failed to produce any credible evidence to show that the value or cost of the missing property exceeded the insurance recovery. Since the requirement to prove cost is an essential element of petitioners' case, and, no such proof being presented, the casualty loss deduction claimed in 1970 has been properly 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 if expenses of moving from one residence to another are paid by an employer directly to a third party, the employee is considered as having received the payment at the time the employer pays said third party (Treasury Regulation section 1.82-1(a)). Since petitioner F. David Hart's employer paid the insurance premium in 1970, it is includable in petitioners' 1970 gross income, notwithstanding the fact that said insurance premium was reported in gross wages on F. David Hart's 1971 wage and tax statement.

C. That for the year 1971 petitioners have properly reduced wages reported per the wage and tax statement by \$3,688.66, since said amount was correctly reported in 1970 gross income. Accordingly, petitioners' 1971 New York State personal income tax liability is to be computed based on a total New York income of \$29,662.50.

D. That petitioners' 1970 New York State personal income tax return correctly reported both the expense and reimbursement of the insurance premium. Since the insurance premium is not includable in 1971 gross income, per Conclusion of Law "C", the Audit Division has incorrectly increased the 1970 moving

expense adjustment by \$3,689.00. Accordingly, the moving expense adjustment allowable for 1970 is \$1,800.00, the amount as originally claimed by petitioners on their return, and the 1970 New York State personal income tax liability is to be computed based on a total New York income of \$24,362.00.

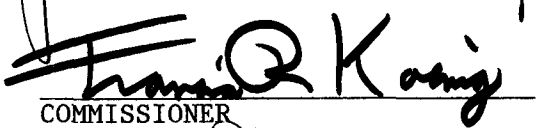
E. That the petition of F. David Hart and Carol A. Hart is granted to the extent indicated in Conclusions of Law "C" and "D", that the Audit Division is directed to recompute petitioners' 1970 and 1971 liabilities in accordance with the decision rendered herein and that the petition, except as so granted, is in all other respects denied.

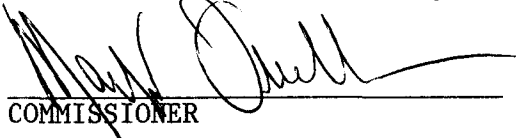
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER