

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Lloyd G. & Lunice H. Myers :

: 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 :
1973

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Lloyd G. & Lunice H. Myers, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lloyd G. & Lunice H. Myers
1167 Galahad Dr.
Casselberry, FL 32707

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
5th day of June, 1981.

Conrad R. Hagelund

Jay Vredenburg

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

June 5, 1981

Lloyd G. & Lunice H. Myers
1167 Galahad Dr.
Casselberry, FL 32707

Dear Mr. & Mrs. Myers:

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	:	
	:	
LLOYD G. MYERS and LUNICE H. MYERS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1973.	:	

Petitioners, Lloyd G. Myers and Lunice H. Myers, 1167 Galahad Drive, Casselberry, Florida 32707, 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 1973 (File No. 16464).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1980 at 2:45 P.M. Petitioners, Lloyd G. Myers and Lunice H. Myers appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioners' claimed deductions for medical expense, taxes, interest expense and casualty loss were properly substantiated.

II. Whether petitioners' reported rental loss was incurred for properties held for the production of income and, if so, whether expenses attributable thereto were substantiated.

FINDINGS OF FACT

1. Petitioners, Lloyd G. Myers and Lunice H. Myers, filed a joint New York State income tax resident return for 1973, on which they deducted medical expense of \$1,243.00, taxes of \$2,539.00, interest expense of \$4,363.00, casualty loss of \$3,400.00 and a rental loss of \$1,985.00.

2. On June 28, 1976, the Audit Division issued a Notice of Deficiency against petitioners, asserting personal income tax of \$731.30, plus interest of \$120.81, for a total of \$852.11. The Notice was issued on the ground that petitioners failed to substantiate the following claimed deductions and, therefore, were disallowed:

	<u>Claimed</u>	<u>Allowed</u>	<u>Adjustments</u>
(1) Medical Expense	\$1,243.00	-0-	\$ 1,243.00
(2) Taxes	2,539.00	-0-	2,539.00
(3) Interest Expense	4,363.00	-0-	4,363.00
(4) Casualty Loss	3,400.00	-0-	3,400.00
(5) Rental Income and Expense	(1,985.00)	5,100.00	7,085.00
TOTAL ADJUSTMENTS			<u>\$18,630.00</u>

Items (1) through (4) claimed as itemized deductions were disallowed in total as unsubstantiated, and, in lieu thereof, the standard deduction of \$2,000.00 was allowed. Adjustments to rental income and expense consisted of adding rental income earned to reported rental loss.

3. Petitioner Lloyd G. Myers contended that the claimed medical expense represents payments to a hospital in which he was a patient and was not covered by his medical insurance policy. Petitioner failed to submit any documentary evidence in support of claimed payment to hospital nor evidence of payment for medical insurance.

4. Petitioners contended that for subject year they incurred a casualty loss as a result of theft of their uninsured automobile. The attorney for the bureau stipulated that petitioners did in fact incur a theft of their uninsured automobile. However petitioners failed to establish with any degree of certainty the year in which the theft of the automobile actually occurred.

5. Petitioners for the year at issue owned two houses: One was a two family house in which they occupied one apartment and allegedly leased the second apartment. The second house owned by petitioners was a one family house which they also allegedly leased in its entirety to an unrelated third party(s).

The testimony offered by petitioners as to whom they leased the apartments was conflicting, vague and unsupported by any documentary evidence.

6. For subject year, petitioners reported a total of \$5,100.00 of rental income from both houses. Against said income petitioners deducted, inter alia 50% (\$1,844.50) of the real estate taxes and interest attributable to the house in which they occupied one of the two available apartments. The remaining fifty percent (50%) was claimed as an itemized deduction. On their second house, petitioners deducted \$2,473.00 for real estate taxes and interest attributable thereto. The total real estate taxes and interest deducted by petitioners for both houses totaled \$4,317.50.

7. At the hearing, petitioners submitted in evidence receipts for payment of real estate taxes in the amount of \$1,570.96 and interest paid on mortgage of \$3,642.81, for a total of \$5,213.77. Of this substantiated amount, \$4,317.50 was apportioned against the reported rental income and the balance of \$896.27 is an itemized deduction.

The petitioners failed to offer any evidence that properties were held for the production of income and failed to submit any evidence in support of claimed expenditures other than for taxes and interest noted supra.

8. At the hearing, petitioners also submitted in evidence receipts for payment of interest of \$211.50 incurred for an automobile loan.

9. The total itemized deductions allowed for interest on mortgage and real estate taxes in the amount of \$896.27, supra Findings "7" and interest on loan in the sum of \$211.50, supra Finding "8" is less than standard deduction allowed by the Audit Division.

CONCLUSIONS OF LAW

A. That petitioners, Lloyd G. Myers and Lunice H. Myers, failed to sustain the burden of proof, within the meaning and intent of section 689(e) of the Tax Law, in establishing that they were entitled to a greater amount for

itemized deductions claimed for medical expense, taxes, interest expense and casualty loss in lieu of the standard deduction allowed by the Audit Division.

B. That petitioners failed to sustain the burden of proof in establishing that the properties were rented with a profit motive; therefore, expenses allegedly attributable thereto, except as noted infra, cannot be deducted under sections 162 and 212 of the Internal Revenue Code.

That the substantiated expenses for interest on mortgage and real estate taxes, supra, Finding of Fact "7" are allowed to the extent of gross rental income, in accordance with the meaning and intent of section 183 of the Internal Revenue Code and section 1.183-1(b)(1) of Regulations as follows:

Adjustment Per Audit Division	\$7,085.00
<u>Less:</u>	
Taxes and Interest Expenses Substantiated	<u>\$4,317.50</u>
Corrected Adjustment	<u>\$2,767.50</u>

C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated June 28, 1976, to be consistent with the Conclusions of Law determined hereto; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as modified, is sustained, together with such interest as may be legally due.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER