

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Harry B. Pinkerton, Jr. :

: 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

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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 Harry Pinkerton, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry B. Pinkerton, Jr.  
189 Bidwell Pkwy.  
Buffalo, NY 14222

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.

*Garnie P. Hagelund*

*[Signature]*

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

April 10, 1981

Harry B. Pinkerton, Jr.  
189 Bidwell Pkwy.  
Buffalo, NY 14222

Dear Mr. Pinkerton:

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

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In the Matter of the Petition	:	
of	:	
HARRY B. PINKERTON, JR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

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Petitioner, Harry B. Pinkerton, Jr., 189 Bidwell Parkway, Buffalo, New York 14222, 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. 13356).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One W. Genesee Street, Buffalo, New York, on April 25, 1980 at 9:15 A.M. Petitioner, Harry B. Pinkerton, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner has substantiated casualty losses claimed on his New York State resident return for the year 1972.

FINDINGS OF FACT

1. Petitioner, Harry B. Pinkerton, Jr., filed a timely New York State Income Tax Resident Return for 1971 on which he claimed casualty losses in the amount of \$1,183.53.

2. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner for \$157.72 in additional personal income tax, plus \$24.76 in interest, for a total due of \$182.48. This was done on the grounds that a casualty loss on property not used in a trade or business is measured by the difference between its fair market value immediately before and immediately after the casualty, not to exceed cost, reduced by any insurance received. The amount of the loss from each casualty must be further reduced by \$100.00. Since petitioner failed to verify the fair market value immediately before the casualties, no loss was allowed.

3. Petitioner's personal residence was burglarized on May 23, 1972 and August 8, 1972, at which times a variety of tangible personal properties were stolen.

4. Petitioner reported the burglaries, along with a schedule of items stolen, to the local police department and to his insurance company.

5. Petitioner filed claims against his insurance company for \$583.62 and \$3,268.84 for each of the burglaries respectively. These values were compiled by an independent company of licensed appraisers who helped petitioner submit his claim to the insurance company.

6. The insurance company allowed petitioner's claims to the extent of \$2,468.93. The difference of \$1,383.53, less \$200.00, was claimed on his New York State income tax return for the year 1972.

7. Petitioner submitted an inventory of all items that were stolen and the appraiser's fair market value of the stolen property immediately before the casualty.

#### CONCLUSIONS OF LAW

A. That petitioner, Harry B. Pinkerton, Jr., has sustained the burden of proof as required by section 685(e) of the Tax Law in establishing the value of his casualty losses and that he is entitled to the amount claimed on his New York State return.

B. That the petition of Harry B. Pinkerton, Jr., is granted and the Notice of Deficiency issued May 19, 1975 totaling \$182.48 is cancelled.

DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER