

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
William & Ruth D. Rosenthal :

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 13th day of March, 1981, he served the within notice of Decision by certified mail upon William & Ruth D. Rosenthal, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William & Ruth D. Rosenthal  
3 Ellish Pkwy.  
Spring Valley, NY 10977

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  
13th day of March, 1981.

*Charles A. Hagelund*

*J. Vredenburg*

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

March 13, 1981

William & Ruth D. Rosenthal  
3 Ellish Pkwy.  
Spring Valley, NY 10977

Dear Mr. & Mrs. Rosenthal:

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 :  
WILLIAM ROSENTHAL and RUTH D. ROSENTHAL : 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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Petitioners, William Rosenthal and Ruth D. Rosenthal, 3 Ellish Parkway, Spring Valley, New York 10977, 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. 12343).

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 25, 1980 at 2:45 P.M. Petitioner William Rosenthal appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioners properly reported interest expense, sales tax and casualty loss deductions.

FINDINGS OF FACT

1. Petitioners, William Rosenthal and Ruth D. Rosenthal, timely filed a joint New York State Income Tax Resident Return for the year 1972.
2. On May 19, 1975, the Income Tax Bureau issued a Notice of Deficiency for \$376.97, plus interest of \$59.18, for the year 1972, along with a Statement of Audit Changes, which outlined the audit adjustments as follows:

<u>ITEM</u>	<u>AMOUNT REPORTED ON RETURN</u>	<u>ALLOWED PER AUDIT</u>	<u>ADJUSTMENT</u>
Interest Expense	\$1,585.95	\$1,142.19	\$ 443.76
Sales Tax	616.00	312.50	303.50
Exemptions	3,900.00	4,550.00	(650.00)
Casualty Loss	7,544.00	-0-	<u>7,544.00</u>
TOTAL ADJUSTMENT			<u>\$7,641.26</u>

3. Petitioner submitted photocopies of a large assortment of checks, bills, receipts, installment agreements, etc., for the intended purpose of establishing the amounts claimed for interest expense, sales tax and a casualty loss.

4. Petitioners, William Rosenthal and Ruth D. Rosenthal, suffered a casualty loss from a flood which caused water damage to their home and to personal tangible property. Accordingly, a casualty loss was claimed as follows:

TOTAL FLOOD LOSS		\$11,544.00
Less: Insurance Reimbursement	\$3,900.00	
\$100.00 Limitation	<u>100.00</u>	4,000.00
Casualty Loss Claimed		<u>\$ 7,544.00</u>

An itemized list of the total flood loss of \$11,544.00 was not submitted. The Income Tax Bureau allowed a flood loss of \$3,900.00, which was equal to the amount of insurance reimbursement.

5. Petitioner William Rosenthal argued that he was not compensated for his losses in full, since the insurance company contended that the damages were sustained by water seepage.

6. The photocopies of the large assortment of documentary evidence submitted (Finding of Fact "3") did not establish amounts larger than those allowed by the Income Tax Bureau for the interest expense, sales tax and casualty loss deductions at issue.

CONCLUSIONS OF LAW

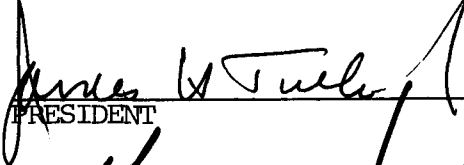
A. That petitioners, William Rosenthal and Ruth D. Rosenthal, have failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that they were entitled within the purview of the Internal Revenue Code and Article 22 of the Tax Law to larger deductions than those allowed by the Income Tax Bureau.

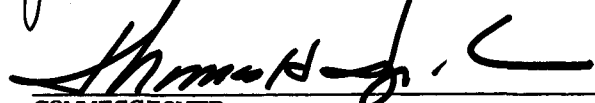
B. That the petition of William Rosenthal and Ruth D. Rosenthal is denied and the Notice of Deficiency issued May 19, 1975 is sustained, along with any additional interest as may be lawfully due.

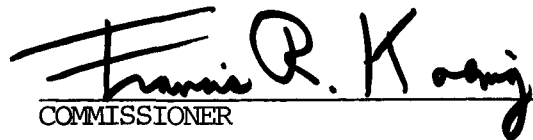
DATED: Albany, New York

MAR 13 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER