

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carl & Laurel Weiss :
: 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 :
1975 _____

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 Carl & Laurel Weiss, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl & Laurel Weiss
56-12 Oceania St.
Bayside, NY 11364

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 A. Hegelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Carl & Laurel Weiss :

: 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 :
1975

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 Gerald Brown the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Gerald Brown
Marlin, Klein, Bier, Brown & Mersel
450 Seventh Ave.
New York, NY 10001

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
5th day of June, 1981.

Conrad A. Hageland

J. Vredenburg

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

June 5, 1981

Carl & Laurel Weiss
56-12 Oceania St.
Bayside, NY 11364

Dear Mr. & Mrs. Weiss:

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
Gerald Brown
Marlin, Klein, Bier, Brown & Mersel
450 Seventh Ave.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CARL WEISS and LAUREL WEISS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1975.	:	

Petitioners, Carl Weiss and Laurel Weiss, 56-12 Oceania Street, Bayside, New York 11364, 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 1975 (File No. 20846).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 30, 1980 at 9:15 A.M. Petitioner Carl Weiss appeared with Gerald Brown, CPA, of the accounting firm of Marlin, Klein, Bier, Brown & Mersel, P.C. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners sustained a casualty loss as the result of the flooding of their basement.

FINDINGS OF FACT

1. Petitioners, Carl Weiss and Laurel Weiss, timely filed a joint New York State Income Tax Resident Return for the year 1975. On said return, petitioners claimed a casualty loss deduction of \$1,345.00.

2. On November 28, 1977, the Audit Division issued a Notice of Deficiency against petitioners for the year 1975, asserting that additional personal

income tax of \$206.79 was due together with interest. Said Notice of Deficiency was based on the total disallowance of the claimed casualty loss deduction. It is the Audit Division's contention that evidence submitted does not support the claim of a sewer backup resulting in a flooded basement.

3. On September 26, 1975, the metropolitan New York area, including Bayside, was inundated with torrential rains caused by the remnants of Hurricane Eloise. As a result of this heavy precipitation, the sewer system in petitioners' neighborhood backed up, causing their finished basement to be flooded with 4 to 6 inches of water and human waste.

CONCLUSIONS OF LAW

A. That the flooding of petitioners' basement was occasioned by natural forces, fixed by an identifiable event and was sudden, unexpected and unusual in nature and, accordingly, qualifies as a casualty within the meaning and intent of section 165(c)(3) of the Internal Revenue Code.

B. That the petition of Carl Weiss and Laurel Weiss is granted and the Notice of Deficiency issued November 28, 1977 is cancelled.

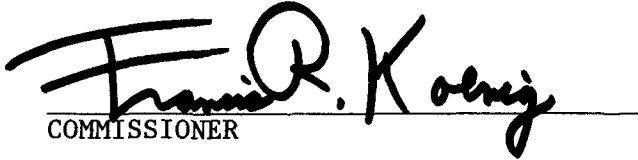
DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER