

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John W. & Margaret A. Anna : 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 :  
1974.

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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 29th day of January, 1982, he served the within notice of Decision by certified mail upon John W. & Margaret A. Anna, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John W. & Margaret A. Anna  
49 S. Main St.  
Batavia, NY 14020

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  
29th day of January, 1982.

*Amie A. Hugeland*

*J. Vredenburg*

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

January 29, 1982

John W. & Margaret A. Anna  
49 S. Main St.  
Batavia, NY 14020

Dear Mr. & Mrs. Anna:

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  
JOHN W. ANNA and MARGARET A. ANNA  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article  
22 of the Tax Law for the Year 1974.

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DECISION

Petitioners, John W. Anna and Margaret A. Anna, 49 South Main Street, Batavia, New York, 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 1974 (File No. 19471).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, 1 West Genesee Street, Buffalo, New York, on July 8, 1980 at 1:15 P.M. Petitioner John W. Anna appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioners incurred a casualty loss arising from damage to their car, and if so, did the petitioners take reasonable steps in recoupment of their loss.

II. Whether the rental property held by petitioners during 1974 constituted an activity which was engaged in for profit, thus permitting them to properly deduct the rental loss which was sustained therefrom.

FINDINGS OF FACT

1. Petitioners, John W. Anna and Margaret A. Anna, timely filed a New York State Income Tax Resident Return for 1974. On said return, a subtraction of \$1,535.66 was taken for a rental loss and a casualty loss was taken in the amount of \$336.72.

2. On May 23, 1977, the Audit Division issued a Notice of Deficiency against petitioners for the year 1974, along with the explanation:

Rental expenses have been allowed for taxes, interest and insurance. Since the rental unit was not available for rent, no other expenses can be allowed.

Based on the information submitted, the items claimed as a casualty loss do not qualify as a casualty. Therefore, the deduction has been disallowed.

The Sales Tax deduction has been increased because of the changes made to your income.

State income tax refunds are not taxable to New York State. Since this modification was not made, the correction has been made as shown below.

	<u>AMOUNT REPORTED ON RETURN</u>	<u>CORRECTED AMOUNT</u>	<u>ADJUSTMENT</u>
Rental Income and Expense	\$(1,535.66)	\$(315.32)	\$ 1,220.34
Casualty Loss	336.72	-0-	336.72
Sales Tax	380.00	428.25	(48.25)
State Income Tax Refund	-0-	256.81	(256.81)
Net Adjustment			<u>\$ 1,252.00</u>
New York taxable income previously reported			<u>14,461.58</u>
Corrected New York taxable income			<u>\$15,713.58</u>

Accordingly, the Notice asserted additional personal income tax of \$121.21, plus interest of \$21.68, for a total of \$142.89.

3. On March 15, 1974, petitioners purchased a new Lincoln from a car dealer in Depew, New York. Before accepting delivery, petitioners noted a dent in the front door of the new vehicle and brought it to the attention of the

dealer. The dealer made some repairs; however, the petitioner was not satisfied with the workmanship in that the paint did not match and the damage was still visible. Petitioners brought this to the attention of the dealer, who readily admitted "the job was shabby" and offered to again repair the car. This time the car was repainted using a paint with a slightly different color which ran and blistered. The dented area which was repaired with fiberglass cracked. The moldings and the vinyl top were spray painted and they could not be repaired. Additionally a heavy grinder was dropped on the rear deck of the automobile which chipped the paint. This was repainted but did not match. The interior of the car was soiled with grease and food wrappers were found under the seats and on the rear floor. The new car was tied up at this dealer's garage for fifty-nine (59) days and travelled 233 miles while being repaired.

At this point, petitioners refused to return the car to this dealer for further attempts to repair it. Petitioners had the car repaired elsewhere for \$436.72.

Petitioners requested that the dealer pay the bills but the dealer refused. Petitioners then contacted Ford Corporation who stated that it was not responsible for the damage. The petitioners were further advised by their attorney that their matter would cost more to litigate than the amount they would probably receive.

4. The petitioners resided in a two-family residence. In prior years, the apartment had been rented and taxes had been paid on this income. Late in 1973, the tenant moved out. Petitioner remodeled the apartment and it was vacant for the year at issue while the work was performed. The remodeling was done to pass the city inspection. Subsequent to the year at issue, the apartment was rented at an increased rental value.

On the petitioners return, they deducted one-half the cost of heat and electricity for the entire house. Additionally they deducted \$240.00 for bath fixtures and rewiring the apartment. The Audit Division contended that the bath fixtures and rewiring of the apartment should have been capitalized and that the deduction for one-half the cost of heat and electricity was high for a vacant apartment.

CONCLUSIONS OF LAW

A. That petitioners, John W. Anna and Margaret A. Anna, failed to show that they could not have refused delivery of the automobile from the dealer. That in general, the risk of loss passes to the buyer on his receipt of goods if the seller is a merchant (Uniform Commercial Code Sec. 2-509(3)) and the damage occurred prior to petitioners' accepting delivery, it is therefore concluded that petitioners did not incur a casualty loss. Petitioner suffered the loss through their own voluntary action by accepting delivery of the damaged automobile. Therefore they have not sustained a casualty loss in accordance with section 165 of the Internal Revenue Code.

B. That the petitioners have established that the property was held for the production of income; therefore, the expenses are deductible under section 162 of the Internal Revenue Code and Article 22 of the Tax Law. Based on the evidence, it is determined that bath fixtures and rewiring of the apartment should be capitalized along with the other improvements made in 1974 and the deduction for heat and electrical bills should be reduced. Therefore, the petitioners' rental loss is determined to be \$1,215.78.

C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated May 23, 1977 to be consistent with the decision rendered herein. That the petition of John W. Anna and Margaret A. Anna is granted to the extent provided in Conclusion of Law "B", supra; and that said petition is in all other respects denied.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER