

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
David & Sylvia Gottesman : 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.

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 27th day of May, 1982, he served the within notice of Decision by certified mail upon David & Sylvia Gottesman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David & Sylvia Gottesman
1113 Doughty Blvd.
Lawrence, NY 11559

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
27th day of May, 1982.

Connie A. Hagedorn

J. Vredenburg

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

May 27, 1982

David & Sylvia Gottesman
1113 Doughty Blvd.
Lawrence, NY 11559

Dear Mr. & Mrs. Gottesman:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

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 | : | |
| DAVID GOTTESMAN and SYLVIA GOTTESMAN | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1974. | : | |

Petitioners, David Gottesman and Sylvia Gottesman, 1113 Doughty Boulevard, Lawrence, New York 11559, 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. 21496).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commissions, Two World Trade Center, New York, New York, on August 24, 1981 at 1:15 P.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioners for subject year incurred a casualty loss arising from theft, and if so, what is the amount of the loss sustained.

II. Whether expenditures for replacing plumbing pipes represents a capital improvement or an incidental repair.

FINDINGS OF FACT

1. Petitioners, David Gottesman and Sylvia Gottesman, filed a New York State income tax resident return for 1974 on which they claimed a casualty loss of \$1,650.00 (loss \$1,750.00 less exclusion of \$100.00), arising from the

theft of an engagement ring and plumbing repairs of \$1,850.00 charged against rental income.

2. On December 19, 1977, the Audit Division issued a Notice of Deficiency together with a Statement of Audit Changes for subject year against petitioners imposing additional personal income tax of \$213.78, plus interest of \$48.68, for a total of \$262.46. Said Notice was issued on the grounds that petitioners failed to establish the historical cost of the item reported stolen, and, that, the plumbing expense was a capital improvement which should be depreciated over its useful life of seven (7) years, rather than an incidental repair deductible in the year paid.

3. While petitioner, Sylvia Gottesman, was shopping at a department store, her purse containing her diamond engagement ring, was stolen. Petitioner Sylvia Gottesman made a report of the theft to the department store's security police and the Nassau Police Department, but the ring was not recovered. A claim of loss was made to petitioners insurance carrier under their homeowner's policy, without success.

Petitioner, David Gottesman, purchased the ring from a relative in 1961. However, he failed to offer into evidence either a receipt and/or invoice for the purchase of ring.

4. Petitioners purchased a two family house in 1969. The petitioners resided in the downstairs apartment and rented the upstairs apartment. In the summer of 1974, the tenants who occupied the upstairs apartment fell behind in their rent. An eviction proceeding was instituted against the tenants who were then required to vacate their apartment. Prior to their removal, the tenants poured a corrosive agent into the sink and shower which corroded the shower pan

and parts of the copper plumbing pipe. As a result, water ran into petitioners' downstairs apartment.

Petitioners were required to replace the shower pan and make immediate replacement of the pipes that were corroded. Because of the location of the damaged pipes, they were required to rip up the shower and bathroom floors.

The shower pan and parts of the copper plumbing would not have had to be replaced but for the malicious act of the tenants.

Petitioners were unable to bring either a civil and/or criminal action against their former tenants as they moved from the State of New York.

CONCLUSIONS OF LAW

A. That any loss arising from theft is allowed as a deduction, providing the petitioner establishes that the property was actually stolen, and if so, the amount of the loss. Petitioner has established the fact that a theft has actually occurred. However, petitioner has failed to produce any evidence from which the value of the gifted property or its cost basis can be determined. Since the requirement to prove cost is an essential element of petitioner's case, and no such proof being presented, the deduction is disallowed (H. W. Zeliff, 17 T.C.M. 622; M. A. Sussell, 25 T.C.M. 1241 and J. E. Wood, 30 T.C.M. 525).

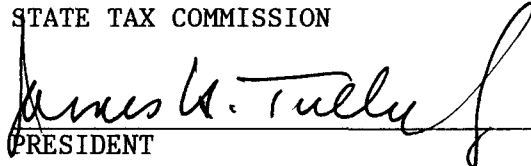
B. That the amount expended to replace the corroded shower pan and the plumbing pipes did not materially add to the value of the property or appreciably prolong its life. That the expenditures represent costs of maintenance and incidental repairs and, not a capital expenditure, and are therefore deductible in the year incurred (Treas. Reg. 1.162-4).

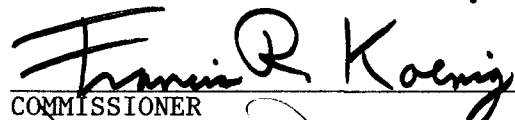
C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated December 19, 1977, to be consistent with the Conclusions of Law determined heretofore, and that except as so modified, the petition is in all other respects denied. The Notice of Deficiency, as modified, is sustained, together with such interest as may be legally due and owing.

DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER