

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
IRVING M. GURSKY

:
:
: 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 6th day of August, 1982, he served the within notice of Decision by certified mail upon Irving M. Gursky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving M. Gursky
77 Fulton Street
New York, NY 10038

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
6th day of August, 1982.

Carmie A. Hagedorn

J. Vredenburg

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

August 6, 1982

Irving M. Gursky
77 Fulton Street
New York, NY 10038

Dear Mr. Gursky:

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

In the Matter of the Petition :

of

Irving M. Gursky :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Irving M. Gursky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving M. Gursky
24-18 Dickens St.
Far Rockaway, NY 11691

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
28th day of November, 1980.

Deborah A Bank

J. Vredenburg

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

November 28, 1980

Irving M. Gursky
24-18 Dickens St.
Far Rockaway, NY 11691

Dear Mr. Gursky:

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

In the Matter of the Petition :
of : DECISION
IRVING M. GURSKY :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972. :

Petitioner, Irving M. Gursky, 77 Fulton Street, New York, New York 10038, 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. 14493).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 13, 1980 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether expenses paid or incurred in connection with the maintenance of a condominium in Florida owned by petitioner, who resided in New York, were incurred for use as a residence or rental property.

II. Whether expenses paid or incurred in connection with the maintenance of a three family home, where petitioner and his family resided in one of the apartments, was held for the production of income.

III. Whether petitioner's claimed deduction for interest expense was properly substantiated.

IV. Whether petitioner's claimed capital loss deduction is limited to \$500.00 as a result of his filing a separate New York State income tax return.

FINDINGS OF FACT

1. Petitioner, Irving M. Gursky, and Muriel Gursky, his wife, filed a New York State Combined Income Tax Return for subject year. On said return, petitioner deducted a rental loss of \$2,186.00, interest expense of \$1,449.00 and a capital loss of \$1,000.00.

2. On January 26, 1976, the Audit Division issued a Notice of Deficiency against petitioner, Irving M. Gursky, asserting personal income tax of \$215.98, plus interest of \$45.09, for a total of \$261.07. The Notice was issued on the grounds that petitioner failed to establish that the loss incurred from real estate owned by him was an activity engaged in for profit; interest expense was unsubstantiated and, therefore, partially disallowed. A capital loss was limited to \$500.00 where petitioner and his wife filed separate returns and a statutory adjustment of \$102.00 was made to claimed medical expenses based on foregoing disallowances.

3. Petitioner purchased a condominium in Florida during the latter part of 1972, although his Federal income tax return indicated that acquisition of the condominium was made at the beginning of the year.

Petitioner contended that his motive in purchasing said condominium was to obtain rental income and/or for investment purposes.

4. Petitioner reported no rental income from the condominium for the year at issue. Petitioner placed a one time advertisement in the New York Times, under date of November 19, 1972 for the rental of the condominium for the months of December 1, 1972, through May 30, 1973. Further, petitioner wrote to only one realtor under date of November 24, 1972, requesting information as to the potential rental value of his condominium and what the realtor's commission and management fee would be in the event the premises were to be rented. Petitioner made no further attempts to contact other realtors and/or

advertise said property for rent. Further, petitioner failed to adequately establish the amount of time he actually spent in Florida in seeking to lease said premises.

5. Petitioner owned a three family house in Far Rockaway, N.Y. where he and his family lived and occupied one of the apartments. Petitioner acquired his interest in the property from his father-in-law.

Petitioner contended that the Far Rockaway property was a rent controlled three family residence; that of the two available apartments, one was vacant and the other occupied by an unrelated party. However, petitioner previously stated to the Audit Division that the apartment was rented to his father-in-law.

6. The testimony offered by petitioner as to whom the apartment was rented to, and the basis for the various expenditures attributable thereto for subject year were conflicting, vague and unsupported by documentary evidence.

7. Petitioner failed to submit any documentary evidence in support of the disallowed interest expense.

8. The Audit Division's representative stipulated that petitioner's spouse had a 50 percent interest in the stock portfolio, and, therefore, that the capital loss disallowed to petitioner in the amount of \$500.00 is to be allowed as a deduction against petitioner's spouse's gross income.

CONCLUSIONS OF LAW

A. That petitioner has failed to establish that his purchase of the Florida condominium was acquired for a production of income and/or for investment purposes, consequently, the expenses paid or incurred in connection therewith are not deductible [J.W. Johnson, Jr., 59 T.C. 791;] That the expenses paid or incurred in connection with the Florida realty was held for use as a residence and are, therefore, not deductible [Treas. Reg. 1.212-1(h) T.D. 7198, 1972-2 C.B. 166]

B. That the Far Rockaway property was held for use as a residence by petitioner and his family, and, therefore, the ordinary and necessary expenses paid or incurred in connection therewith are not deductible [Treas. Regs. 1.212-1(h) T.D. 7198, 1972-2 C.B. 166].

C. That petitioner has failed to meet the burden of proof within the meaning and intent of section 689(e) of the Tax Law in establishing that he was entitled to a greater amount in interest expense than allowed by the Audit Division.

D. That petitioner's spouse Muriel Gursky is allowed a capital loss deduction of \$500.00 in accordance with Finding of Fact "8". That the resultant reduction in her income tax liability is to be offset against petitioner's income tax liability.

E. That the petition of Irving M. Gursky is granted to the extent provided in Conclusion of Law "D"; and that, except as so granted, such petitions are in all other respects denied.

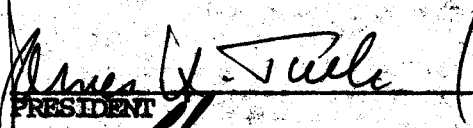
F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 26, 1976, to be consistent with the Conclusions of Law determined hereto.

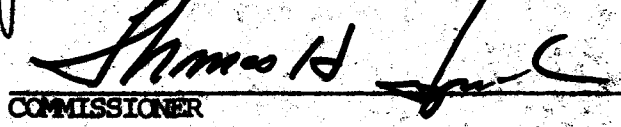
DATED: Albany, New York

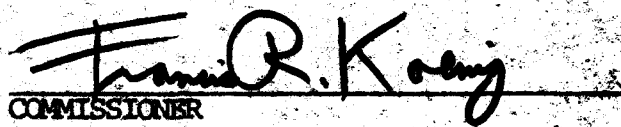
~~NOV 28 1980~~

AUG 06 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS

ALBANY, N. Y. 12227

CLAIM CHECK NO.

☐ HOLD

DATE

12/1

1ST NOTICE

12-16

2ND NOTICE

12-16

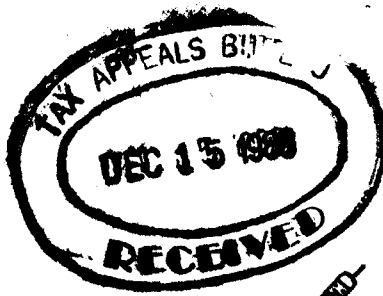
RETURN

Detached from
PS Form 3940-A
Feb. 1978

Irving M. Gursky
24-18 Dickens St.
Far Rockaway, NY 11691

RETURN
to
SENDER

ATTEMPTED
NOT KNOWN



Self
B/A

Rockaway

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

UNCLAIMED
RETURNED TO
SENDER

Irving Gursky
77 Fulton Street
New York, NY 10038



Delivered from
PS Form 3840-A
JUN 1977

RETURN

2ND NOTICE

1ST NOTICE

DATE

8-6-82

☐ HOLD

CLAIM CHECK NO.

AUG 3 1982

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

August 6, 1982

Irving M. Gursky
77 Fulton Street
New York, NY 10038

Dear Mr. Gursky:

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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
ALBANY, NEW YORK 12227

November 28, 1980

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24-18 Dickens St.
Far Rockaway, NY 11691

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STATE OF NEW YORK

STATE TAX COMMISSION

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B. That the Far Rockaway property was held for use as a residence by petitioner and his family, and, therefore, the ordinary and necessary expenses paid or incurred in connection therewith are not deductible [Treas. Regs. 1.212-1(h) T.D. 7198, 1972-2 C.B. 166].

C. That petitioner has failed to meet the burden of proof within the meaning and intent of section 689(e) of the Tax Law in establishing that he was entitled to a greater amount in interest expense than allowed by the Audit Division.

D. That petitioner's spouse Muriel Gursky is allowed a capital loss deduction of \$500.00 in accordance with Finding of Fact "8". That the resultant reduction in her income tax liability is to be offset against petitioner's income tax liability.

E. That the petition of Irving M. Gursky is granted to the extent provided in Conclusion of Law "D"; and that, except as so granted, such petitions are in all other respects denied.

F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 26, 1976, to be consistent with the Conclusions of Law determined hereto.

DATED: Albany, New York

STATE TAX COMMISSION

~~NOV 28 1980~~ AUG 06 1982


PRESIDENT


COMMISSIONER


COMMISSIONER