

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jack & Frieda Henkin :
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 Years :
1969, 1971 & 1972. :

AFFIDAVIT OF MAILING

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 May, 1982, he served the within notice of 690 by certified mail upon Jack & Frieda Henkin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack & Frieda Henkin
4046 Newport Street
Deerfield, FL 33441

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 May, 1982.

Annice R. Hayland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Tax under Article 22 of the Tax Law for the Years :
1969, 1971 & 1972 :
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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 5th day of May, 1982, he served the within notice of 690 by certified mail upon Paul Aronson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Aronson
Marshall, Bratter, Greene, Allison & Tucker
430 Park Ave.
New York, NY 10022

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 May, 1982.

Ernie A. Haglund

J. Vredenburg

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

May 5, 1982

Jack & Frieda Henkin
4046 Newport Street
Deerfield, FL 33441

Dear Mr. & Mrs. Henkin:

Please take notice of the 690 of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 4 months 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 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
Paul Aronson
Marshall, Bratter, Greene, Allison & Tucker
430 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JACK AND FRIEDA HENKIN
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1969, 1971 and 1972.

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DECISION

Petitioners, Jack and Frieda Henkin, 4046 Newport Street, Deerfield, Florida, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969, 1971 and 1972 (File No. 16155).

A formal hearing was duly held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1980. Petitioners appeared by Marshall, Bratter, Greene, Allison & Tucker, Esqs. (Paul Aronson, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the petitioners correctly reported a taxable loss which arose from the condemnation of their property by the City of New York.

II. Whether petitioners failed to report rental income for 1972.

FINDINGS OF FACT

1. (a) A Notice of Deficiency for personal income tax for the year 1969 was issued on April 14, 1976 against Jack and Frieda Henkin of 31 2nd Avenue, Pine Grove Park, St. Cloud, Florida. Said deficiency amounted to \$7,840.00, plus penalty for negligence under section 685(b) of the Tax Law of \$392.50 and

interest of \$2,801.23, for a total of \$11,033.73. The deficiency is based upon the receipt of \$56,000.00 as a part payment on a condemnation award.

(b) A similar Notice of Deficiency was issued on the same date for the year 1971. Said deficiency is in the amount of \$4,700.70, plus a penalty for negligence under section 685(b) of the Tax Law of \$235.04, and interest of \$1,115.48, for a total of \$6,051.22. The deficiency is based upon the receipt of income of \$43,777.00 identified as income on a condemnation award.

(c) A similar Notice of Deficiency was issued on the same date for the year 1972. That deficiency is in the amount of \$20.02, plus penalty for negligence under section 685(b) of the Tax Law of \$1.00, and interest of \$4.43, for a total of \$25.45. This deficiency is based upon the disallowance of a loss taken on petitioners' tax return of \$75,559.47 and the addition of additional rental income of \$2,050.00.

2. (a) Mr. Henkin was the owner of property located at 1335-65 West Farms Road, Bronx, New York.

(b) On July 1, 1968, title vested in the City of New York pursuant to eminent domain proceedings for the construction of Intermediate School Number 84 and for recreational purposes.

3. (a) On April 21, 1969, Mr. Henkin received \$56,000.00 in partial payment for the property. He did not know how much the final amount would be.

(b) Petitioners did not report this on any tax return for 1969.

(c) The deficiency for 1969 is based upon adding the entire \$56,000.00 to taxable income.

4. On July 1, 1970, a decision of the Supreme Court of the State of New York awarded damages.

5. The award amounted to \$57,600.00 for the land and \$44,700.00 for the building (based on a gross income from the property of \$12,250.00 and a capitalization rate of 11 percent) for a total of \$102,300.00. An award of \$12,183.00 was carved out of this for a fixture claim of another person, leaving a net amount of \$90,117.00.

6. (a) Notice was received by the attorneys that a warrant in payment of the award would be ready, subject to contingencies, on November 23, 1971. This was in the amount of \$43,777.67.

(b) The petitioners' tax return did not report any income from the condemnation award.

(c) The deficiency is based upon the addition to income of \$43,777.67 as income from the condemnation award.

7. (a) On January 31, 1972, Mr. Henkin received the amount of \$43,777.67 from the City as final payment of the condemnation award.

(b) Petitioners reported on their 1972 income tax return the receipt of \$90,117.00 against which a cost basis was claimed of \$176,595.21 and depreciation of \$10,918.74, for a net loss of \$75,559.47. They also reported a deduction of \$2,050.00 as a rental expense on their business property.

(c) The deficiency is based upon the disallowance of the loss taken on the return of \$75,559.47 and the addition of additional rental income of \$2,050.00.

8. (a) The property in question was purchased by Mr. Henkin on June 28, 1946. This was pursuant to an option for which he paid \$7,000.00. The purchase price included a mortgage of \$19,500.00 which has since been satisfied.

(b) The property was located at the end of a rock ledge which was eighteen feet high in back and six feet high in front.

(c) From 1946 through 1949, Mr. Henkin proceeded to level the property. This was done from time to time by himself and two neighboring business firms, D'Angelo Construction Company and Louis Deane Superior Coal Excavating Company. The excavated rock was dumped at a pier in the Hudson River located nearby. Mr. Henkin estimates that this cost him \$14,000.00.

(d) In 1953 Mr. Henkin purchased a small parcel adjacent to the original parcel. This was also part of the property condemned in 1968. This parcel cost him \$900.00.

(e) Mr. Henkin had gasoline pumps installed on the property.

(f) In the 1940's and 1950's Mr. Henkin built three concrete buildings on this property. One building was a small office building, a second was a two-bay auto repair garage and the third was a machine shop. Mr. Henkin estimates the cost of these buildings was \$58,600.00. Both the gasoline pumps and the repair garage were operated by tenants. Mr. Henkin ran the machine shop.

(g) In 1966 the machine shop was converted into an automatic car wash and two other buildings were constructed, one of them as a machine shop. Mr. Henkin acted as his own general contractor in doing this. He estimates the cost of this work was \$21,700.00. Sidewalks were also installed. Mr. Henkin and a partner ran the car wash.

(h) In the condemnation proceedings Mr. Henkin incurred lawyers fees of \$5,802.28 and appraisal fees of \$1,650.00.

(i) Mr. Henkin lacks detailed records of his costs. He disposed of records when he changed his residence.

9. Petitioners did not receive any rental income or own any rental property during 1972.

CONCLUSIONS OF LAW

A. That the deficiency for 1969 is cancelled. The receipt of \$56,000.00 in 1969 did not give rise to taxable income since clearly Mr. Henkin had a cost basis in excess of the amount received.

B. That the deficiency for 1971 is cancelled. The receipt of \$43,777.00 on which the 1971 deficiency is based did not take place in 1971. It did take place in 1972.

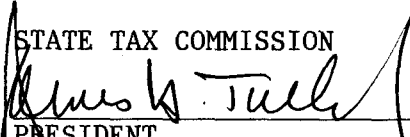


C. (1) The deficiency for 1972 is redetermined. Mr. Henkin has shown that the original cost basis of his property was \$176,595.21. However he has not shown to what extent he has claimed depreciation on his prior tax returns. The entry on his 1972 return that only \$10,000.00 of depreciation had been taken is not sufficient as proof. By his own testimony the cost of the buildings he erected was \$80,300.00 and this will all have to be considered to have been depreciated. Therefore he must subtract from the \$90,117.00 received in 1972 a basis of \$96,259.47 (\$176,559.47 minus \$80,300.00) which results in a loss of only \$6,142.00.

(2) With respect to the itemized rental income Mr. Henkin has adequately shown that that should be eliminated from the deficiency.

(3) Mr. Henkin was not negligent in the filing of his tax return within the meaning of section 685(b) of the Tax law.

(4) The deficiency for 1972 shall be recomputed in accordance with the decision.

DATED: Albany, New York
MAY 05 1982

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER