

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Estate of Oscar and Sonia Jaffee :  
Jerry Esposito, Executor :

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 :  
1973.

State of New York  
County of Albany

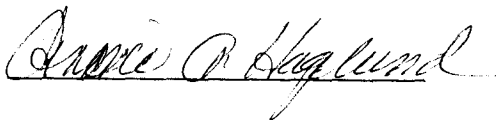
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Estate of Oscar and Sonia Jaffee, Jerry Esposito, Executor the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

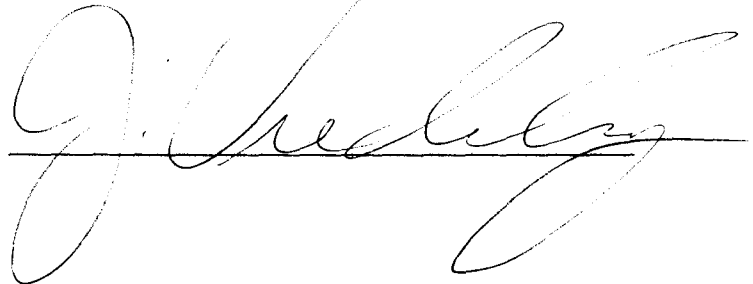
Estate of Oscar and Sonia Jaffee  
Jerry Esposito, Executor  
3723 E. Tremont Ave.  
Bronx, NY 10465

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  
26th day of March, 1982.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Estate of Oscar and Sonia Jaffee :  
Jerry Esposito, Executor :

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 :  
1973.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon Gerald Weit the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald Weit  
36 King St.  
Port Jefferson Sta., NY 11776

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  
26th day of March, 1982.

*Cornie D. Hagedorn*

*J. Vredenburg*

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

March 26, 1982

Estate of Oscar and Sonia Jaffee  
Jerry Esposito, Executor  
3723 E. Tremont Ave.  
Bronx, NY 10465

Dear Mr. Esposito:

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  
Gerald Weit  
36 King St.  
Port Jefferson Sta., NY 11776  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ESTATE OF OSCAR JAFFEE	:	
AND	:	DECISION
ESTATE OF SONIA JAFFEE;	:	
JERRY ESPOSITO, EXECUTOR	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

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Petitioners, Estate of Oscar Jaffee and Estate of Sonia Jaffee; Jerry Esposito, Executor, 3723 East Tremont Avenue, Bronx, New York 10465, 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 1973 (File No. 20899).

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 5, 1981 at 9:15 A.M. Petitioners appeared by Jerry Esposito, Executor. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner, Estate of Oscar Jaffee, sustained a business loss for subject year.

FINDINGS OF FACT

1. Petitioners, Estate of Oscar Jaffee and Estate of Sonia Jaffee, by Jerry Esposito, Executor, filed a New York State Income Tax Resident Return for 1973. On said return, petitioners reported a business loss of \$22,020.10 as a

result of destruction of inventory by vermin and rust. The value of the inventory loss was based on Federal Schedule C (Form 1040) for 1973.

2. On December 22, 1976, The Audit Division received a consent, executed by Jerry Esposito, Executor, extending the period of limitation for assessment for 1973 to April 15, 1978.

3. On September 26, 1977, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$2,304.23 plus interest of \$596.13 for a total of \$2,900.46. The Notice of Deficiency was based on a Statement of Audit Changes issued against petitioners under same date which held that petitioners failed to substantiate a business loss resulting from inventory destruction.

4. Oscar Jaffee, was self employed as a retail peddler of household goods. Petitioner became ill during 1972 and died in April 1973. The Executor contends that Oscar Jaffee's illness prevented him from continuing his business for any part of 1973.

5. The executor further contends that he first received notice that the decedents had merchandise in stock was when the lessee of the premises at 1885 White Plains Road, Bronx, New York telephoned him subsequent to the death of Sonia Jaffee. The lessee of said premises informed executor that petitioner-lessor was four (4) months in arrears on rent, and, instructed him to remove the merchandise from the store. The executor contends that he paid the lessor the arrears in rent, and removed the inventory after the death of Sonia Jaffee in March, 1974. The invoice for removing the merchandise from leased premises was dated August 1, 1973.

6. The executor failed to introduce any evidence which would substantiate that the merchandise found in the store was in fact the same merchandise reported as the opening inventory on petitioners' Federal Schedule C for 1973.

CONCLUSIONS OF LAW

A. That petitioners, Estate of Oscar Jaffee and Estate of Sonia Jaffee, have failed to sustain the burden of proof within the meaning and intent of section 689(e) of the Tax Law to show that they had sustained a business loss resulting from the destruction of inventory. That the testimony elicited from the Executor as to how he determined the inventory loss was unsupported by any credible evidence.

B. That the petition of Estate of Oscar Jaffee and Estate of Sonia Jaffee is denied, and, the Notice of Deficiency issued September 3, 1977 is sustained.

DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER