

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph B. Koppelman :
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. :
_____ :

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Joseph B. Koppelman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph B. Koppelman
55 Edgemere Dr.
Albertson, NY 11507

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
18th day of June, 1982.

Connie P. Haglund

J. Vredenburg

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

June 18, 1982

Joseph B. Koppelman
55 Edgemere Dr.
Albertson, NY 11507

Dear Mr. Koppelman:

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	:	
JOSEPH B. KOPPELMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

Petitioner, Joseph B. Koppelman, 55 Edgemere Drive, Albertson, New York 11507, 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. 27357).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 2, 1981 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

- I. Whether petitioner has sustained the burden of proof in the substantiation of the cost basis of real property subsequently condemned.
- II. Whether the entire condemnation award is taxable as income.

FINDINGS OF FACT

1. On November 10, 1977, petitioner signed a consent fixing period of limitation upon assessment of personal income taxes for the year ended December 31, 1974 at any time on or before April 15, 1979.
2. On April 5, 1979 the Audit Division issued a Notice of Deficiency to petitioner in the amount of \$5,586.36, including interest, based on a Statement

of Audit Changes previously sent to petitioner wherein an adjustment was made in the computation of income tax for 1974. Fifty percent of a condemnation award of \$54,992.00 was added to income resulting in an increase of tax due of \$4,176.90, plus interest of \$1,409.46, for a total due of \$5,586.36.

3. The "Closing Statement of Collection of Award" dated October 11, 1974 for the premises at 2076 Clinton Avenue indicates that the total award to the petitioner for the property was \$114,991.78 which included interest of \$14,991.78. Sixty thousand dollars (\$60,000.00) was reported as "previously collected" and the amount of \$54,991.78 as "now being collected". Total deductions were \$2,299.83 for attorney's fee and \$1,045.04 for other expenses for a total of \$3,344.87.

4. On October 8, 1968 petitioner paid \$8,500.00 to the Kings County Savings Bank for the assignment to him personally of a mortgage on Lot 24 in Block 3094 (2076 Clinton Avenue). A corporation in which petitioner was a principal, purchased said property for \$100.00 upon foreclosure of the mortgage.

5. Petitioner offered into evidence a group of checks, none of which could be related to expenditures to 2076 Clinton Avenue, Bronx, New York, the subject of the condemnation award. He also offered immaterial documents relating to other property not related to the issue.

6. Petitioner offered into evidence lists of violations reported by the Department of Buildings relating to the property subject to the condemnation and to other property.

7. Petitioner did not offer any documentary or other evidence which showed the cost of property relating directly to the award. His 1974 State income tax return was silent as to said award. He did not submit a copy of his

federal form 1040, schedule "D" capital gains and losses for 1974, or any depreciation schedules.

CONCLUSIONS OF LAW

A. That petitioner Joseph B. Koppelman failed to sustain the burden of proof imposed by section 689(e) of the Tax Law in establishing a cost basis of the property located at 2076 Clinton Avenue.

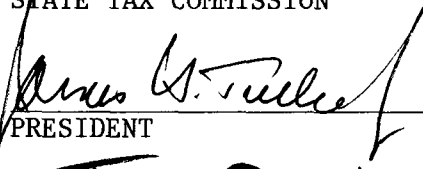
B. That gain on the condemnation award is taxable income subject to capital gain treatment. However, interest on an award paid by the condemning authority to compensate the owner for delay in payment is not part of the award and is taxed as ordinary interest income (Treasury Regulation §1.1033(h)-1); that interest on the award was erroneously taxed as a capital gain. However, since claim was not asserted at or before this hearing, the Tax Commission is precluded from increasing the deficiency (section 689(d)(1) of the Tax Law).


C. That the petition of Joseph B. Koppelman is denied and the Notice of Deficiency issued April 5, 1979 is sustained.

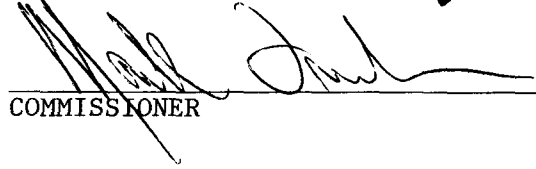
DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER