

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Alfred & Anne Ross :
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 :
1975. :

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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Alfred & Anne Ross, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

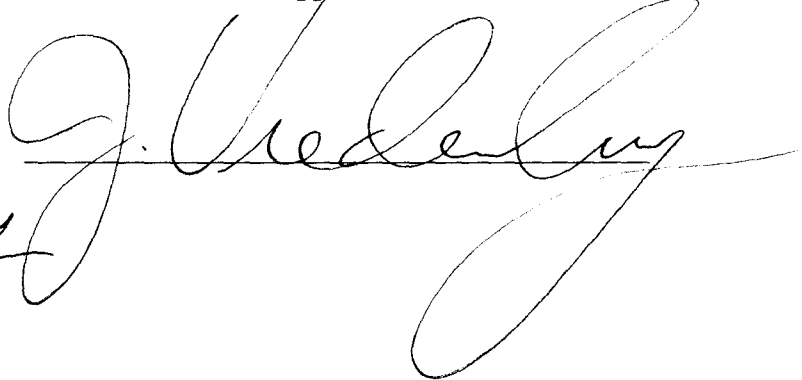
Alfred & Anne Ross
115 E. 9th St.
New York, NY 10003

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
11th day of June, 1982.





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

June 11, 1982

Alfred & Anne Ross
115 E. 9th St.
New York, NY 10003

Dear Mr. & Mrs. Ross:

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
ALFRED AND ANNE ROSS
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1975.

DECISION

Petitioners, Alfred and Anne Ross, 115 East 9th Street, New York, New York 10003, 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 1975 (File No. 21084).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 19, 1979 at 1:15 P.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether a bad debt deduction may be allowed based on the foreclosure of a mortgage given as security for petitioner Ann Ross's guarantee of all debts and obligations owed to the mortgagee by a corporation owned by petitioners.

II. Whether petitioners should be permitted to deduct medical and dental expenses for their daughter.

FINDINGS OF FACT

1. Petitioners, Alfred and Anne Ross, timely filed a New York State personal income tax resident return for 1975, on which they claimed a miscellaneous itemized deduction of \$101,500.00 and medical and dental expense deductions of \$2,046.00 for their daughter, Kathleen.

2. The Audit Division issued a Statement of Audit Changes against petitioners. Said Statement asserted additional income tax due for the year 1975, on the grounds that petitioners improperly deducted the aforementioned amounts claimed as bad debt and medical and dental expense deductions. Accordingly, the Audit Division issued a Notice of Deficiency for 1975 against petitioners on November 28, 1977 for \$1,913.41 in personal income tax, plus \$263.78 in interest, for a total of \$2,177.19.

3. Petitioners were owners and officers of the Mt. Kisco Health Spa, Inc. ("Mt. Kisco").

4. Petitioners were also the owners of ARH Development Corp. ("ARH") which, in turn, owned the land and building on and in which Mt. Kisco was located.

5. Ann Ross was the sole owner of petitioners' home, which she owned free and clear. In order to borrow money to be used in operating Mt. Kisco, Anne Ross placed a first mortgage on this home. This mortgage, executed on May 25, 1973 with a mortgage given by ARH on its land and building, enabled ARH to receive \$150,000.00. Petitioner Anne Ross also gave the mortgagee, K. B. Weissman, a written guarantee that she would pay all debts and obligations that ARH owed to Weissman. This guarantee was also secured by the above-mentioned mortgage on her home.

6. By a consolidation and extension agreement also dated May 25, 1973, the above mortgage was consolidated with a prior mortgage of \$125,000.00 given by ARH on its land and building and held by K.B. Weissman. The effect of this was to create one consolidated mortgage totalling \$275,000.00, secured by the ARH land and building, and by Anne Ross's home and guarantee of debt payment.

This consolidated mortgage was subordinate to a prior mortgage on the ARH land and building held by The Manhattan Savings Bank as mortgagee.

7. By an agreement dated November 19, 1974, the terms of the consolidation agreement were modified so that Anne Ross's home was released from the collateral specified as securing the consolidated mortgage. However, her mortgage remained valid as security for the principal sum of \$150,000.00 (the amount of the original mortgage), and as security for her obligations under the written guarantee to pay all debts and obligations owed by ARH to K.B. Weissman. This agreement specifically stated that Anne Ross's guarantee included, but was not limited to, sums due under the consolidated mortgage of \$275,000.00.

8. ARH subsequently was unable to meet its debts owed to Weissman, and the mortgaged home, serving as collateral securing Anne Ross's guarantee to pay ARH debts, was foreclosed by judgment entered December 16, 1974. The property was purchased by the mortgagee for \$80,000.00, and was sold by said mortgagee on October 27, 1975 for \$100,000.00. This foreclosure of the home occurred approximately one year prior to the foreclosure of petitioners' business pursuant to the mortgage held by The Manhattan Savings Bank.

9. At the hearing, petitioners testified that both they and their corporation (ARH) went into bankruptcy, yet petitioners gave no dates pertaining to either the filing of bankruptcy petitions or to any adjudications of bankruptcy, nor any evidence as to whether petitioner Anne Ross in fact had any right of recourse against ARH based on her payment of ARH debts under her written guarantee.

10. The petitioners' daughter, Kathleen, was 24 years old and lived in their home during the entire tax year 1975. She had extensive psychological

and physical problems which entailed large medical costs. However, her medical insurance covered most of her medical bills in the hospital.

11. The petitioners hired Kathleen to work as a secretary at Mt. Kisco where she received a salary of \$12,480.00 for 1975. They maintained that she was not capable of holding a job anywhere else.

12. Petitioners assert that they contributed \$7,950.04 during 1975 towards the support of their daughter, but they could not substantiate it.

CONCLUSIONS OF LAW

A. That although petitioners may have been entitled to a non-business bad debt deduction, they failed to sustain the burden of proof imposed upon them by section 689(e) of the Tax Law to establish the cost basis of the land and building owned by petitioner Anne Ross. Accordingly, petitioners are not entitled to claim a loss or deduction for personal income tax purposes.

B. That a limited deduction is allowed for every individual for expenses paid during the taxable year for medical and dental care of the taxpayer, his spouse or a "dependent" of the taxpayer (as defined in section 152 of the Internal Revenue Code), irrespective of the dependent's amount of gross income. Treasury Regulation §1.151-4 provides that "An additional exemption of \$750.00 is allowed under Sec. 151(e) for each dependent (as defined in Sec. 152) whose 'gross income' for the calendar year in which the taxable year of the taxpayer begins is less than \$750.00, or who is a child of the taxpayer and (1) has not attained the age of 19 at the close of the calendar year in which the taxable year of the taxpayer begins, or (2) is a student." The amount of gross income earned by Kathleen Ross was in excess of \$750.00 and she did not otherwise qualify as a dependent of petitioners nor was she claimed as such by them for Federal or New York State income tax purposes. Therefore, the deduction

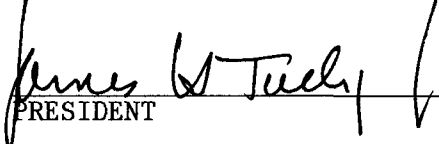
claimed for medical and dental expenses incurred on behalf of their daughter during the period at issue herein is disallowed.


C. That the petition of Alfred and Anne Ross is hereby denied and the Notice of Deficiency dated November 28, 1977 is sustained.

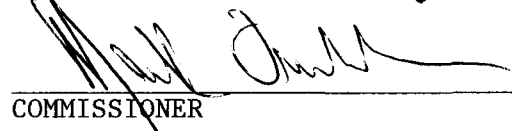
DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER