

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Abner Rudnick :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976. :

State of New York
County of Albany

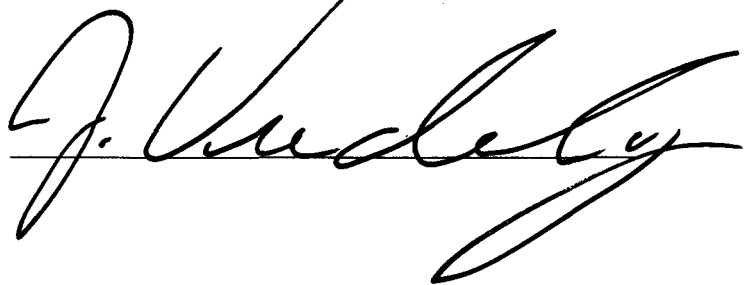
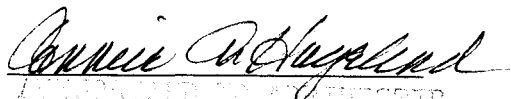
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Abner Rudnick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abner Rudnick
616 Briarwood Circle
Hollywood, FL 33024

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 October, 1982.

ANNE W. HAYLAND
CLERK OF THE COMMISSIONER
OF TAXES
SECTION 171

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

October 6, 1982

Abner Rudnick
616 Briarwood Circle
Hollywood, FL 33024

Dear Mr. Rudnick:

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 & 1312 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	:	
ABNER RUDNICK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Articles	:	
22 and 30 of the Tax Law for the Year 1976.	:	

Petitioner, Abner Rudnick, 616 Briarwood Circle, Hollywood, Florida 33024, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 24287).

On September 10, 1981, petitioner, Abner Rudnick, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based upon the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUE

Whether petitioner has fully substantiated a casualty (theft) loss claimed in the amount of \$13,051.00.

FINDINGS OF FACT

1. Petitioner, Abner Rudnick, and his wife Sondra, timely filed a 1976 New York State income tax resident return, computing their taxes separately on said return. Mr. Rudnick claimed all the itemized deductions. Included in said deductions was a theft loss of \$13,051.00.

2. On August 10, 1978, the Audit Division issued a Notice of Deficiency against petitioner, Abner Rudnick, imposing additional tax due of \$1,008.50

(New York State tax of \$765.15 and New York City tax of \$243.35) plus interest of \$114.26, for a total due of \$1,122.76. Attached to said Notice was a Statement of Audit Changes dated February 22, 1978 that, as a result of an audit of petitioner's records, allowed a casualty (theft) loss of \$4,500.00 which resulted in an adjustment to petitioner's taxable income of \$8,551.00.

3. In December, 1976, petitioner's residence was burglarized. The burglary was reported to the Queens Burglary Squad and to petitioner's insurance company, and a schedule of the items stolen was provided. Petitioner and his wife determined their theft loss deduction as follows:

Loss before insurance reimbursement	\$24,299.00
Insurance reimbursement	<u>11,148.00</u>
Balance	\$13,151.00
Less: statutory limitation	<u>100.00</u>
Theft loss	\$13,051.00

4. As a result of the audit by the Audit Division, petitioner was allowed a loss of \$15,748.00, less the insurance reimbursement and the \$100.00 statutory limitation. This resulted in the adjustment of \$8,551.00.

5. The value of the theft loss was evidenced by a schedule (which in certain areas was incomplete) showing each item stolen, quantity and value; the value apparently represented the fair market value of the items as of the date of loss. In addition, insurance releases showing reimbursement in the amounts of \$6,050.00 and \$5,098.15 "accepted in lieu of a sworn statement in proof of loss" were previously submitted. No additional evidence was submitted.

CONCLUSIONS OF LAW

A. That the requirement to prove cost is an essential element for a theft loss deduction under section 165 of the Internal Revenue Code. (H. W. Zeliff, 17 T.C.M. 622; M. A. Sussell, 25 T.C.M. 1241 and J. E. Wood, 30 T.C.M. 525.)


B. That petitioner, Abner Rudnick, has failed to sustain the burden of proof imposed by sections 689(e) and 1312(a) of the Tax Law to show that he is entitled to a greater theft loss deduction than the amount allowed by the Audit Division.

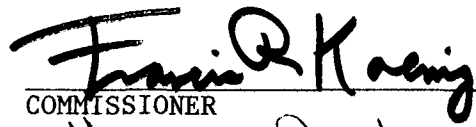
C. That the petition of Abner Rudnick is denied and the Notice of Deficiency dated August 10, 1978 is sustained.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER