

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Seymour G. Saslow	:	
and Claire Saslow	:	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	:	
1975.	:	

State of New York
County of Albany

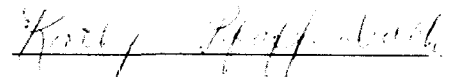
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Seymour G. Saslow and Claire Saslow, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

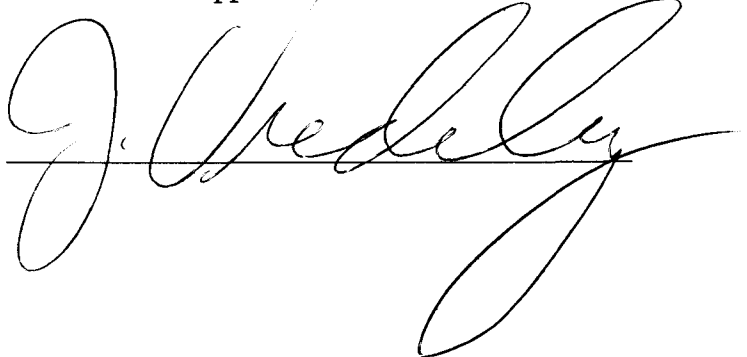
Seymour G. Saslow
and Claire Saslow
420 E. 51st St.
New York, NY 10022

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of December, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 29, 1982

Seymour G. Saslow
and Claire Saslow
420 E. 51st St.
New York, NY 10022

Dear Mr. & Mrs. Saslow:

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

SEYMOUR G. SASLOW AND CLAIRE SASLOW

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, Seymour G. Saslow and Claire Saslow, 420 East 51st Street, New York, New York 10022, 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. 27471).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 2, 1981 at 2:45 P.M. Petitioner Seymour G. Saslow appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (James F. Morris, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency is barred by the three-year period of limitations on assessment.

II. Whether petitioner Claire Saslow is properly entitled to a capital loss deduction of \$500.00.

FINDINGS OF FACT

1. Petitioners, Seymour G. Saslow and Claire Saslow, timely filed a New York State Combined Income Tax Return for the year 1975 whereon a capital loss deduction of \$1,000.00 was claimed by Seymour G. Saslow. No capital gain or loss was reported by Claire Saslow.

2. On April 13, 1979, the Audit Division issued a Statement of Audit Changes wherein petitioner Seymour G. Saslow's claimed capital loss deduction was reduced to \$500.00, the maximum allowable where separate returns are filed by each spouse. Additionally, a modification was made for Seymour G. Saslow's share of the New York City unincorporated business tax deduction taken on the partnership return of Helphand-Lewis & Co., but since said modification was not contested by petitioners, it is not at issue. Accordingly, a Notice of Deficiency was issued under the date April 13, 1979 asserting additional personal income tax of \$254.28, plus interest of \$64.66, for a total due of \$318.94.

3. Petitioners contended that the Notice of Deficiency was untimely mailed since they did not receive same until April 20, 1979. Accordingly, they ask that said deficiency be treated as time barred.

4. The Audit Division submitted an affidavit of mailing and a receipted list of certified mailings evidencing receipt of the Notice of Deficiency at issue by the United States Post Office in Albany, New York on April 13, 1979. Furthermore, the envelope in which said notice was mailed bears the machine stamped date April 13, 1979.

5. Although petitioner Seymour G. Saslow conceded that he is properly entitled to a capital loss deduction of only \$500.00, he maintained that his wife is equally entitled to an identical deduction since some of the capital losses incurred were attributable to her transactions.

6. Petitioners submitted documentation establishing that their net long-term capital loss of \$3,259.00, reported on their 1975 Federal Schedule D, was comprised, in part, of a carryover loss of \$2,056.00 attributable to 1974. Such carryover was comprised, in part, of a long-term capital loss of \$1,005.00, sustained by petitioner Claire Saslow. The \$1,000.00 capital loss deduction

claimed for 1974 represented a short-term loss. Accordingly, the full loss sustained by petitioner Claire Saslow was carried over to 1975.

CONCLUSIONS OF LAW

A. That section 683(a) of the Tax Law provides that:

"Except as otherwise provided in this section, any tax under this Article shall be assessed within three years after the return was filed."

B. That section 683(b)(1) of the Tax Law provides that:

"Early Return - For purposes of this section a return of income tax, except withholding tax, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day."

C. That the Notice of Deficiency at issue herein was mailed to petitioners on April 13, 1979. Accordingly, such notice was timely issued pursuant to section 683(a) of the Tax Law.



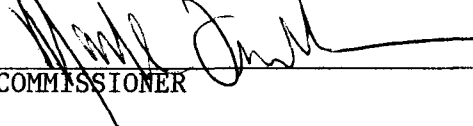
D. That petitioner Claire Saslow is properly entitled to a long-term capital loss deduction of \$500.00 for taxable year 1975.

E. That the petition of Seymour G. Saslow and Claire Saslow is granted to the extent provided in Conclusion of Law "D" supra, and except as so granted, said petition is, in all other respects, denied.

F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated April 13, 1979 to be consistent with the decision rendered herein.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER