

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Benjamin L. & Edith Feinberg :

: 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 1971. :

State of New York
County of Albany


Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Benjamin L. & Edith Feinberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Benjamin L. & Edith Feinberg
6 Brookside Rd.
Binghamton, NY 13904

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
15th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Benjamin L. & Edith Feinberg :

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 1971. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Abraham Piaker the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abraham Piaker
Piaker, Lyons & Co.
2521 Vestal Parkway E.
Vestal, NY 13850

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
15th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 15, 1983

Benjamin L. & Edith Feinberg
6 Brookside Rd.
Binghamton, NY 13904

Dear Mr. & Mrs. Feinberg:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Abraham Piaker
Piaker, Lyons & Co.
2521 Vestal Parkway E.
Vestal, NY 13850
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BENJAMIN L. FEINBERG	:	
and	:	DECISION
EDITH M. FEINBERG	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

Petitioners, Benjamin L. Feinberg and Edith M. Feinberg, 6 Brookside Road, Binghamton, New York 13904, 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 1971 (File No. 11331).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on September 11, 1979 at 2:45 P.M. Petitioner Benjamin L. Feinberg appeared with Abraham Piaker, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether a casualty loss should be reduced by the value of the improvements made by a tenant to the leased property and not charged to the landlord.

FINDINGS OF FACT

1. Petitioners, Benjamin L. Feinberg and Edith M. Feinberg, filed a joint New York State Income Tax Resident Return for 1971. On said return, the petitioners reported income from the partnership of Robert J. Green and Benjamin Feinberg (hereinafter "Green & Feinberg") of \$18,249.77.

2. In the summer of 1972, the partnership of Green and Feinberg sustained a casualty loss on real property from a flood in Elmira, New York. The loss as appraised by outside experts hired by the Small Business Administration amounted to \$40,128.49. This loss was reduced by a portion of a Small Business Administration Emergency Loan that was forgiven (\$5,000.00), leaving a net casualty loss of \$35,128.49 claimed in the partnership tax return (as amended) for 1971 in accordance with section 165(h) of the Internal Revenue Code.

3. On December 28, 1972, petitioners filed a Claim for Credit or Refund of Personal Income Tax for 1971 on which they reported their share (\$17,564.25) of the partnership's casualty loss and requested a refund of personal income tax of \$2,459.00. The Income Tax Bureau made payment of the amount requested.

4. On December 23, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners asserting personal income tax of \$1,960.04 and interest of \$316.17 for a sum of \$2,276.21. The Income Tax Bureau disallowed a portion of the casualty loss on the grounds that petitioners failed to reduce the casualty loss by \$28,000.00, which was the value of the improvements made by the tenant, International Business Machines Corporation (hereinafter "IBM"), and not charged to the landlord (Green & Feinberg).

5. Prior to the casualty loss, IBM and the partnership of Green & Feinberg entered into a contractual agreement which reads in part as follows:

"If the demised premises shall be partially damaged by fire or other cause, and such damage can be repaired within ninety(90) days thereafter, then and in such event, the damages shall be repaired by and at the expense of the Landlord.

* * *

or it (IBM) may make such repairs for the account of, and at the expense of the Landlord.

* * *

* * *

IBM may place such temporary partitions, fixtures, (including lightning fixtures), personal property, machinery, motors and the like in the leased premises, and may make such improvements and alterations in the interior thereof as it may desire at its own expense. All such things shall remain the property of IBM.

* * *

IBM may remove all or any of such things prior to or at the expiration of this lease, and in such event, IBM shall repair any damage resulting from such removal. IBM, at its option, may abandon any such alterations or improvements at the expiration of this lease as it may be extended, and in such event, title to such alterations or improvements shall vest in the Landlord."

6. The flood inundated the basement and a part of the first floor. The partnership of Green & Feinberg repaired all damages to the basement. IBM made repairs, alterations and improvements to the first floor which was valued by IBM at \$30,000.00. IBM requested and received from the partnership \$2,000.00 for repair of flood damages and paid at its own (IBM) expense \$28,000.00 for alterations and improvements.

7. Petitioners contended that the alterations and improvements voluntarily made by IBM in the amount of \$28,000.00 do not fall within the meaning of section 165(a) of the Internal Revenue Code as asserted by the Income Tax Bureau. Section 165(a) of the IRC says, "There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise".

8. The \$28,000.00 of improvements were not made in lieu of rent.

CONCLUSIONS OF LAW

A. That the \$28,000.00 of improvements made by the tenant go beyond the cost of the damages caused by the flood and, therefore, do not fall within the meaning of section 165(a) of the Internal Revenue Code.

B. That the \$28,000.00 of improvements are not reportable by the partnership since the improvements made by a tenant to leased property, generally, are not income to the landlord, either when made or when the lease ends in accordance with the meaning of section 109 of the Internal Revenue Code and 1.109-1 of I.R.C. Regulations.

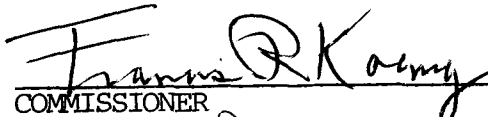
C. That the petition of Benjamin L. Feinberg and Edith M. Feinberg is granted and the Notice of Deficiency issued December 23, 1974 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983


PRESIDENT


COMMISSIONER


COMMISSIONER