

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
William & June Lippert	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1976.	:	

State of New York
County of Albany

David Parchuck, 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 20th day of May, 1983, he served the within notice of Decision by certified mail upon William & June Lippert, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William & June Lippert
3650 Millersport Hwy.
East Amherst, NY 14051

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
20th day of May, 1983.

David Parchuck

James P. Haglund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 20, 1983

William & June Lippert
3650 Millersport Hwy.
East Amherst, NY 14051

Dear Mr. & Mrs. Lippert:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM LIPPERT AND JUNE LIPPERT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1976.	:	

Petitioners, William Lippert and June Lippert, 3650 Millersport Highway, East Amherst, New York 14051, 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 1976 (File No. 31713).

A small claims hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York on July 13, 1982 at 2:45 P.M. Petitioners appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq., (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioners have substantiated certain items claimed as casualty losses, medical and dental expenses, and contributions incurred in the year 1976.

FINDINGS OF FACT

1. Petitioners, William Lippert and June Lippert, husband and wife, timely filed a New York State Income Tax Resident Return (Form IT-201/208) for the year 1976, on which they claimed deductions for medical and dental expenses of \$1,518.10, casualty losses totalling \$2,600.00 and contributions of \$551.00.

2. On May 12, 1978, the Audit Division issued to each petitioner a Notice of Deficiency asserting additional tax due for 1976 from each petitioner in the

amount of \$132.68, plus interest. These notices, sent via certified mail to petitioners at 3650 Millersport Highway, East Amherst, New York 14051, were returned to sender (the Audit Division) as unclaimed.

3. A Statement of Audit Changes dated November 21, 1977, explained the above asserted deficiencies were based on petitioners' failure to substantiate the medical and dental expenses, casualty losses and contributions claimed as deductions on their 1976 return (see Finding of Fact "1"). The Audit Division disallowed in total the claimed medical and dental expenses and casualty losses, and reduced (from \$551.00 to \$379.75) the amount of contributions claimed by petitioners.

4. No petition was filed within ninety days of the original May 12, 1978, date of issuance of the notices of deficiency, and on August 16, 1978, the Audit Division issued to petitioner William Lippert a Notice and Demand for Payment of Income Tax Due, in the amount of \$132.68, plus accrued interest of \$8.25 for a total of \$147.73.

5. On March 10, 1979, petitioners paid under protest on behalf of petitioner William Lippert the above tax of \$132.68, plus accrued interest of \$24.98 for a total paid of \$157.66. On the same date, petitioners filed a claim for refund of this amount paid under protest. This refund claim was denied in full by the Audit Division on July 30, 1979.

6. On April 4, 1980, petitioners timely filed an amended New York State Income Tax Resident Return (Form IT-201/208) for the year 1976, on which they increased the amount of the itemized deduction shown on their original return by including an additional casualty loss in the amount of \$905.00. This results in an increase of \$46.38 to the amount of refund (\$538.12) as claimed by petitioners on their return as originally filed. On September 17, 1981,

petitioners filed a perfected petition for a hearing to contest the notices of deficiency, the denial of their May 10, 1978 claim for refund of tax paid under protest, and to substantiate the additional casualty loss claimed on their amended return filed for 1976.

7. No issue as to the timeliness of petitioners' petition was raised by the Audit Division at the hearing.

8. On their United States Individual Income Tax Return for 1976, petitioners' claimed an itemized deduction for contributions in the amount of \$379.75. On both their original and amended New York State Income Tax Resident Returns for 1976, petitioners claimed contributions totalling \$551.00. Petitioners assert this discrepancy between the Federal and State amounts claimed is due solely to the fact that the Federal return was filed prior to the State returns, and at the time of filing their Federal return, petitioners had not thought to claim the additional amount.

9. Petitioner June Lippert testified the additional amount of contributions (\$171.25) claimed on the State returns is based on mileage incurred in the use of petitioners' two personal automobiles for "paper drives" and for the distribution of "slingers" (flyers or notices placed in mailboxes or newspaper boxes). These paper drives and distribution of slingers in which petitioners participated were for the benefit of the North Amherst, New York volunteer fire department and for the North Amherst area Boy Scout troops. These activities were conducted in the spring and the fall of 1976, and required petitioners to spend approximately two full days during each season driving to various homes throughout the North Amherst area to pick up bundled newspapers and to distribute slingers. Petitioners calculated the number of miles travelled (in forming the basis for their claimed deduction) as follows:

Total Road Mileage in North Amherst (per Town Highway Dep't records)	390 miles
mileage claimed per vehicle, per season	285 miles
times: 2 vehicles	<u>X 2</u>
equals: claimed mileage per season	570
times: number of seasons	<u>X 2</u>
equals: total mileage claimed	<u>1140</u>

Petitioners multiplied their claimed total mileage (1140 miles) by 15 cents per mile to arrive at the amount of their claimed contribution for mileage (\$171.25; the additional .25 represents a claimed expense for postage in conjunction with the foregoing activities). Petitioners did not keep mileage records in connection with the foregoing activities, and the mileage claimed represents petitioners' estimate of the mileage travelled.

10. Petitioners claimed a deduction for a casualty loss involving the destruction of a large awning attached to a summer cottage owned by petitioners. The awning (and cottage) is used each year by petitioners from mid-June through the Labor Day weekend in September. Petitioners submitted a police report stating the awning was vandalized on July 16, 1976, by being severely slashed, and also a photograph of the slashed awning. Petitioners claimed the awning was rendered completely useless, submitted a bill showing the awning had been purchased on May 5, 1970, at a cost of \$444.20, and claimed an additional cost of \$15.80 for cords for a total cost basis of \$460.00. Petitioners figured their deduction for this loss by assuming a six (6) year useful life for the awning and calculating as follows:¹

Cost of awning and cords (May, 1970)	\$460.00
less: usage, wear and tear (3 months use per year for 5 years)	(140.00)
equals: fair market value on July 16, 1976	<u>320.00</u>
less: IRC §165(c)(3) limitation	(100.00)
equals: amount of casualty loss claimed	<u>\$220.00</u>

¹ Petitioners' computations assume a useful life of six (6) years of full-time use.

Petitioners received no reimbursement through insurance for this loss and, in fact, carried no insurance on their summer cottage and/or its contents.

11. Petitioners also claimed a deduction for two casualty losses occurring in or about late January and early February of 1977 during the "blizzard of 1977". These two losses involved a small tractor and snowthrower attachment, and a larger Ford "8-N" tractor, respectively, neither of which were used for profit or in any business conducted by petitioners, but rather were used by petitioners to remove snow from their driveway in the winter and to cut their lawns in the summer. The loss of both tractors was caused when each went into a large ditch at the end of petitioners' driveway during attempts to remove snow from the driveway at the height of the blizzard. Petitioners calculated their deduction for these unreimbursed losses as follows:

Craftsman Riding Tractor with 42 inch snowthrower attachment:

Cost of Tractor (purchased new in 1973)	\$ 850.00
Cost of Snowthrower (purchased new in 1975)	395.00
Total Cost basis	<u>1,245.00</u>
Estimated Fair Market Value (both) as of February, 1977	700.00
less: estimated salvage value after damage	(250.00)
equals: amount of casualty loss claimed	<u>\$ 450.00</u>

Ford "8-N" Tractor:

Cost of Tractor (purchased used in 1959)	\$4,500.00
Estimated Fair Market Value as of February, 1977	2,700.00
less: estimated salvage value after damage	(800.00)
equals: amount of casualty loss claimed	<u>\$1,900.00</u>

12. Petitioners reduced the combined total of the above two losses (\$2,350.00), both of which occurred during the blizzard of 1977, by a total of \$100.00 in accordance with the limitation specified by section 165(c)(3) of the Internal Revenue Code.²

² Separate losses arising out of the same occurrence.

13. Both the larger Ford "8-N" tractor and the smaller tractor with snow-thrower were rendered unusable due to the damage incurred by going into the ditch. Neither the large tractor nor the smaller tractor and snowthrower has been repaired to date. Estimates received by petitioners placed the cost of repairing the larger tractor at approximately \$4,000.00, which included repairing the engine and transmission and replacing the broken front axle.

14. On their amended Form IT-201/208 for 1976, filed April 4, 1980 (see Finding of Fact "6"), petitioners claimed a larger itemized deduction than was claimed on their return as originally filed for 1976. This increased deduction was based, in part, on an additional casualty loss incurred on or about June 15, 1976, involving the theft from petitioners' boat of a "pilot's" seat, railing and bases, miscellaneous fittings and a Bendix ship to shore radio. According to documents and testimony submitted at the hearing, petitioners calculated their deduction for the loss of these items, none of which were covered by insurance, as follows:

<u>ITEM</u>	<u>COST BASIS</u>	<u>JUNE 15, 1976 ESTIMATED FAIR MARKET VALUE</u>
a) Pilot's Seat with hinges, brackets, supports, and labor to install.	\$478.30	\$375.00
b) Rail and bases.	\$ 56.90	\$ 35.00
c) Ship to Shore radio with antenna, wiring, and labor to install.	\$1,000.00	\$675.00
Total Amount of Loss (Fair Market Value)		\$1,085.00
Less: IRC §165(c)(3) limitation		(100.00)
Equals: amount of casualty loss		<u>\$ 985.00</u>

The amount of loss shown by the foregoing computations (\$985.00) exceeds the amount of loss for the described items as reported on petitioners

amended return (Form IT 201/208) for 1976. Petitioner's seek allowance only of the amount claimed (\$905.00) per their amended return.

15. In substantiation of the above claimed casualty loss, petitioners submitted at the hearing a police report describing the loss, a photograph of a similar pilot's bench, an original invoice for the ship-to-shore radio and a catalog listing prices for the various items taken from the boat.

16. Petitioners also claimed deductions for medical and dental expenses incurred in 1976 totalling \$1,518.10.³ These expenses included unreimbursed charges for medicine, drugs and doctors' services for both petitioners, as well as major dental work, including extensive root canal therapy, caps and bridgework for petitioner June Lippert.

17. Petitioners submitted receipts and copies of cancelled checks for some of the claimed medical and dental expenses, but were unable to produce documents in substantiation of all of the claimed items, including substantiation of the major dental work in the claimed amount of \$1,825.00 performed on Mrs. Lippert by one Dr. D'amico. Petitioners did submit an estimate of the cost for similar dental work, and petitioner June Lippert testified Dr. D'amico's whereabouts were unknown, his files were not accessible and that it was not possible to get either a statement from the doctor or a copy of any bill for his services. Petitioners paid their medical and dental bills in part by cash and in part by check.

³ In computing their claimed medical and dental expense deduction, petitioners reported the sum of \$98.40 (at line 1, Schedule A, Form 1040) as one half of insurance premiums for medical care. At the hearing,, petitioners conceded that this amount was in error and should properly be reduced to \$43.30. Accordingly, the claimed deduction (\$1,518.10) is reduced to \$1,474.80.

Finally, petitioners rely on the reasons stated in Findings of Fact "18" and "19", infra, as grounds for a lack of substantiation of certain of the medical and dental expenses and claimed casualty losses.

18. On October 28, 1977, petitioners first received a notice that their 1976 return was being audited by the Audit Division. This notice advised petitioners of a November 15, 1977, 9:30 a.m. meeting with an Audit Division representative. Petitioners advised the Audit Division, by telephone, that they would be unable to attend this scheduled meeting. Petitioners were advised to submit substantiation of the foregoing disputed items by mail to the Audit Division's Buffalo District Office. Petitioner June Lippert testified that petitioners mailed original documents in substantiation of the claimed items of deduction to the Buffalo District Office. Petitioner June Lippert testified further that petitioners have been unable to secure the return of these documents, nor have they received acknowledgement of their whereabouts despite repeated requests for return of the documents.

19. In the summer of 1978, a fire in petitioners' home destroyed many of petitioners' personal records, including records kept for tax purposes.

CONCLUSIONS OF LAW

A. That the losses sustained by petitioners with respect to the large tractor and the small tractor with snowthrower attachment, and the boat equipment and radio were sudden, unnatural and unexpected losses, and were not reimbursed by any insurance recovery. Accordingly, these losses qualify as casualty losses within the meaning and intent of section 165(c)(3) of the Internal Revenue Code and regulations thereunder.⁴ Furthermore, petitioners have sustained their

⁴ Although the casualty losses on the two tractors were incurred by petitioners in 1977, they may properly be claimed as a deduction on petitioners' 1976 tax return (see IRC §165(h) and Revenue Ruling 77-490, 1977-2 C.B. 64).

burden of proving the dollar amount of the above losses which may be deducted, and have properly adjusted such deductible amounts in accordance with the limitation specified by section 165(c)(3).

That the loss sustained with respect to the vandalized awning, though sudden, unnatural and unexpected, was calculated on the basis of a six (6) year, full-time useful life as compared to actual seasonal usage by petitioners. Petitioners have failed to prove that such calculation makes reasonable allowance for actual wear and tear of the awning, or to show that the value of the awning at the time of its destruction exceeded the limitation specified by section 165(c)(3). Accordingly, no loss may be allowed with respect to the awning.

B. That although petitioners were unable to submit complete documentary evidence in support of each item of medical and dental expense claimed, petitioners have submitted sufficient credible evidence, both in the form of documents and testimony, to support medical and dental deductions in the amount of \$1,474.80; (see Findings of Fact "16", "17", "18" and "19", and footnote "3").


C. That the estimate of total mileage travelled, which forms the basis for the contested portion of petitioners' claimed contributions (see Findings of Fact "8" and "9"), is excessive. The total is not based on any records maintained by petitioners and indicates that each vehicle separately covered (per season) approximately seventy five percent (75%) of the total road mileage in the Town of North Amherst, New York. Accordingly, petitioners' claimed total mileage figure (1,140 miles) is reduced to 570 total miles. Furthermore, the rate per mile utilized by petitioners (15 cents per mile) is reduced to the rate of 7 cents per mile, which is the rate allowed with respect to contributions in accordance with section 170 of the Internal Revenue Code, regulations thereunder, and Revenue Procedure 74-24; 1974-2 C.B. 477.

D. That with the exception of the minor adjustments for medical and dental expenses and contributions (see Conclusions of Law "B" and "C"), and the disallowance of the claimed deduction for casualty loss with respect to the awning, the petition of William Lippert and June Lippert is hereby granted. That the Audit Division is authorized to refund to petitioners the amount of tax and interest paid under protest in consistency with the decision rendered herein as well as any other refund of interest lawfully due petitioners.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 20 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit <i>Small Claims Decision</i>	Date of Request <i>6/28/83</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>SC Dec 5-20-83</i>
Name <i>William + June Lippert</i>	
Address <i>3650 Millersport Hwy East Amherst N.Y. 14051</i>	

Results of search by Files

<input type="checkbox"/> New address:	<i>RP 80 N/P 81 " 82 " Jub 6/24/85</i>
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>Unclaimed 6-27-83 T/P called permitted address corrected per class 6-27-83</i>

Searched by <i>J. Haymond</i>	Section	Date of Search <i>6-28-83</i>
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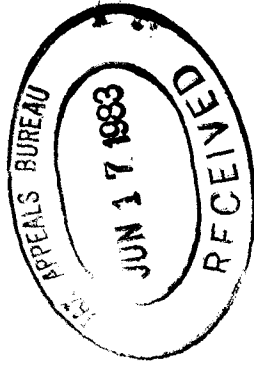
PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

T.A 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

5.23-81
6-1-83
6/10/83

William & June Lippert
3650 Millersport Hwy.
East Amherst, NY 14051



CERTIFIED

P 481 207 807

MAIL