

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

Authorized to administer oaths

STATE TAX COMMISSION

In the Matter of the Petition
of
H. Paul & Helen Korneffel

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Personal Income &
UBT under Article 22 & 23 of the Tax Law for the
Years 1978 & 1979.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Melvin Turk, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Melvin Turk
521 5th Avenue
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.

David Parshuck

James A. Hargrave Authorized to administer oaths
pursuant to Tax Law section 174

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

January 18, 1984

H. Paul & Helene Korneffel
44 Bacon Rd.
Head of Harbor, NY 11780

Dear Mr. & Mrs. Korneffel:

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 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Melvin Turk
521 5th Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
H. PAUL AND HELENE KORNEFFEL	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax and Unincorporated	:	
Business Tax under Articles 22 and 23 of the	:	
Tax Law for the Years 1978 and 1979.	:	

Petitioners, H. Paul and Helene Korneffel, 44 Bacon Road, Head of Harbor, New York 11780, filed a petition for redetermination of a deficiency or for refund of personal income tax and unincorporated business tax under Articles 22 and 23 of the Tax Law for the years 1978 and 1979 (File Nos. 38089 and 38270).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 12, 1983 at 9:45 A.M. Petitioners appeared by Melvin Turk, CPA. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed a theft loss of \$9,900.00 claimed on petitioners' 1978 personal income tax return, for lack of substantiation.

II. Whether, for personal income and unincorporated business tax purposes, the Audit Division properly treated as additional, unreported income in 1978 and 1979 the amounts of \$17,739.00 and \$23,220.00, respectively, representing for each of such years the excess of petitioners' deposits to their accounts over income reported, plus estimated cash living expenses of \$9,620.00.

FINDINGS OF FACT

1. Petitioners, H. Paul and Helene Korneffel, filed New York personal income tax and unincorporated business tax returns for the years under consideration. Petitioners' unincorporated business tax returns reflected net income derived from Plymouth Gas Service, a gas heating installation and repair business operated by Mr. Korneffel as a sole proprietor. On federal Schedule E (Supplemental Income Schedule), appended to petitioners' unincorporated business tax returns, they reported losses from Hochberg & Korneffel, a partnership engaged in the rental of real property.

2.(a) On June 17, 1982, following a field audit, the Audit Division issued to petitioners a Notice of Deficiency, asserting additional personal income tax under Article 22 of the Tax Law for the years 1978 and 1979 in the amount of \$5,188.00 plus interest and penalty pursuant to section 685(b). On the same date, the Audit Division issued to petitioners a second Notice of Deficiency, asserting additional unincorporated business tax under Article 23 for 1978 and 1979 in the amount of \$1,854.59 plus interest and penalty pursuant to section 685(b).

(b) On January 31, 1982, Melvin Turk (petitioners' representative in this proceeding) had executed on petitioners' behalf a consent extending the period of limitation for assessment of personal income and unincorporated business taxes for the year 1978 to April 15, 1983. Said consent was validated by the Audit Division on February 2, 1982.

(c) The Audit Division disallowed in full a theft loss in the sum of \$9,900.00 claimed by petitioners on their 1978 personal income tax return. In addition, a cash availability test conducted by the field examiner allegedly

disclosed additional, unreported income of \$17,739.00 and \$23,220.00 for 1978 and 1979, respectively, which amounts were held subject to personal income tax and unincorporated business tax. The method employed in arriving at such amounts is summarized below.

	<u>1978</u>	<u>1979</u>
Deposits to savings accounts	\$11,723	\$ 9,935
Deposits to checking account	15,365	28,667
Funds needed for closing (related to partnership)	9,000	--
	<u>\$36,088</u>	<u>\$38,602</u>
Husband's income	\$20,430	\$23,850
Wife's net wages	7,539	1,152
	<u>\$27,969</u>	<u>\$25,002</u>
Deficit	\$ 8,119	\$13,600
Add: estimated cash living expenses*	<u>9,620</u>	<u>9,620</u>
ADDITIONAL, UNREPORTED INCOME	\$17,739	\$23,220

* Estimated cash living expenses (annually, family of four)

food	\$5,200
pocket money	2,080
contributions (per return)	300
gasoline	1,040
miscellaneous	1,000
	<u>\$9,620</u>

3. Petitioners were married in Germany in May, 1954, while Mr. Korneffel was serving in the United States Army. Mrs. Korneffel's family is rather affluent and bestowed upon petitioners various gifts on the occasions of their engagement and marriage. Incident to Mr. Korneffel's discharge, the Army transported his personal effects, including the gifts, back to the United States.

Throughout petitioners' marriage, Mrs. Korneffel's family has continued to give them numerous gifts of value, such as Hummel and Rosenthal figurines,

sterling silver flatware, crystal and china, and jewelry. All of the gifts were purchased in Germany, and either hand carried by visiting relatives or air-shipped to the U.S. Petitioners were unable at the time of the audit or of the hearing to produce any customs receipts or other documents showing duty paid.

Petitioners did not specially insure these gifts, as they considered the premiums unaffordable.

4. On November 6, 1978, petitioners' residence was burglarized and thoroughly ransacked. In their initial statements to the Suffolk County police, petitioners reported that \$6,000.00 in cash and \$14,000.00 worth of jewelry had been taken. They were unable to immediately identify all the items stolen, because of the state of disarray of their home and also because many of the objets d'art were not displayed but packed away in boxes.

After straightening the house and examining their belongings, petitioners discovered that the cash reported as stolen had been previously deposited to their account, but that many of the gifts from Mrs. Korneffel's family were missing. They estimated their total loss at \$20,000.00; taking into account the \$10,000.00 reimbursed by their insurer (the maximum amount recoverable under their policy), petitioners accordingly deducted \$9,900.00 as a theft loss.

5. After corresponding with Mrs. Korneffel's family, petitioners eventually compiled a list of all the items stolen: approximately 31 Hummel figurines; 9 Hutschenreuter figurines; 4 Rosenthal figurines; 5 Meissen figurines; 2 sterling silver candelabra; a five-piece sterling silver coffee and tea service; 6 Poole goblets; a six-piece cordial set; silver flatware, 20 six-piece place settings;

Rosenthal china, setting for twelve; 7 rings, 2 watches, tie pins, 8 sets of cuff links and 1 cameo pin; 32 Waterford crystal glasses; a stamp collection; and a coin collection.

An antique dealer (who is a friend of petitioners) reviewed the inventory, consulted reference books and retail establishments, and estimated the replacement cost of all the above-described items at \$116,220.00. In connection with petitioners' insurance claim, petitioners also submitted the inventory to National Adjustment Co., who estimated the total loss at \$60,000.00.

6. With respect to the Audit Division's cash availability test, petitioners dispute only one item in the analysis of deposits: a deposit to their checking account on April 3, 1979 in the sum of \$8,728.50, which amount, they claim, was not unreported income derived from Plymouth Gas Service.

From time to time, Mrs. Korneffel's parents wired funds directly from their bank account in Germany to their daughter's account in New York. For example, on August 18, 1978, they wired \$9,519.01 from their account at Landesbank Rheinland-Pfalz to Mrs. Korneffel's account at Century Federal Savings in Centereach. Sometime prior to April 2, 1979, Mrs. Korneffel's family again wired approximately \$9,000.00 to her account; on April 2, she withdrew \$8,000.00 of such sum; and on April 3, a deposit of \$8,728.50 was made to petitioners' checking account.

CONCLUSIONS OF LAW

A. That in accordance with Treasury Regulations sections 1.165-7(b) and 1.165-8(c), the amount of a theft loss is the lesser of (1) the fair market value of the subject property immediately before the theft, or (2) its adjusted basis; such amount must be reduced by any insurance or other compensation received for the loss. Further, the deduction allowable under Internal Revenue

Code section 165(a) is limited to that portion of the loss which is in excess of \$100.00. Code section 165(c)(3), as in force for the years at issue. Since petitioners acquired all the items stolen from them by gift, their basis in the property is the adjusted basis of the donors (or the last preceding owner who acquired the property other than by gift), or the fair market value of the property at the time of the gift, whichever is lower. Code sections 1011 and 1015(a). Petitioners have come forth with estimates by disinterested third parties of replacement cost, and of fair market value just prior to the burglary. Notwithstanding that such figures are inexact and that petitioners have offered no proof of their adjusted basis in the property, this evidence clearly supports the reasonableness of their deduction of \$9,900.00 by reason of the theft.

B. That petitioners have established that \$8,000.00 of the total deposit made to their checking account on April 3, 1979 constituted a gift to them from Mrs. Korneffel's parents; such amount is thus not properly subject to personal income and unincorporated business tax. On the other hand, petitioners have offered no explanation for the remaining discrepancies between the amount of their reported income and the amount of their deposits plus estimated cash living expenses. These discrepancies, \$17,739.00 for 1978 and \$15,220.00 for 1979, must therefore be considered additional, unreported income for said years, subject to personal income and unincorporated business tax.

C. That petitioner Helene Korneffel is not liable for unincorporated business tax and the Audit Division is directed to remove her name from the Notice of Deficiency insofar as liability for such tax is concerned.

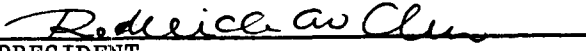
D. That the petition of H. Paul and Helene Korneffel is granted to the extent indicated in Conclusions of Law "A", "B" and "C"; the notices of deficiency

issued on June 17, 1982 are to be modified accordingly; and except as so modified, the deficiencies are in all other respects sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER