

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
James Iverson :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the :
Year 1979. :

State of New York :

ss.:

County of Albany :

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon James Iverson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James Iverson
P.O. Box 211
Webster, NY 14580

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

Sworn to before me this
23rd day of May, 1985.

David Parchuck

David A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 23, 1985

James Iverson
P.O. Box 211
Webster, NY 14580

Dear Mr. Iverson:

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, 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES IVERSON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1979.	:	

Petitioner, James Iverson, P.O. Box 211, Webster, New York 14580, 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 1979 (File No. 37247).

A small claims hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on December 4, 1984 at 1:15 P.M., with all documents to be submitted by December 21, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether petitioner has substantiated his entitlement to a casualty loss in the amount of \$5,746.00.

FINDINGS OF FACT

1. Petitioner, James Iverson, timely filed a New York State Income Tax Resident Return (Form IT-201) for the year 1979, on which was claimed, inter alia, a casualty loss in the amount of \$5,746.00.¹

¹ Petitioner's wife, Joan Iverson, filed her return with petitioner on the same Form IT-201 (under Filing Status "3"; i.e. married filing separately on one return). However, the entire casualty loss deduction was claimed on petitioner James Iverson's return.

2. On March 30, 1982, the Audit Division issued to petitioner a Notice of Deficiency asserting additional tax due in the amount of \$697.48, plus interest. This deficiency results from the Audit Division's disallowance of petitioner's claimed casualty loss, upon the assertion that such loss was completely reimbursed by insurance.

3. The claimed casualty loss at issue stems from damage to Mr. and Mrs. Iverson's home, a single-family, two-story frame structure located at 202 Alpine Drive, Town of Pittsford, New York, which had been designed and built by an architect. The basement of this home, which is where the damage giving rise to the loss occurred, was a finished basement which had been partitioned into several rooms, including a 350-square foot family room with a fireplace and a bar, and other (smaller) rooms including a powder room, a small bedroom with a closet, a cedar-lined storage room, and a furnace room.

4. On or about February 27, 1979, at which time the Iversons were in California, a hot water pipe in their basement froze and burst. Over the period of time between this break and the Iversons' return to their home, approximately 110,000 gallons of water flowed into the finished basement. The break also caused the hot water heater to run continuously, thus serving as a boiler sending steam into the finished basement. All the furnishings and contents of the basement were destroyed, as was the linoleum flooring, the doors, trim molding and baseboard heaters. The electrical system had to be replaced, as did the wall and ceiling paneling. This latter paneling was striated plywood paneling, a material no longer available at the time of the loss.

5. The claimed casualty loss at issue is based only on the "structural" damage incurred. No loss was claimed for the furnishings and contents of the basement, which loss was reimbursed, although not completely, by insurance.

6. Independent appraisal of the premises placed its pre-loss value at \$71,400.00 and its post-loss value at \$59,750.00, with the \$11,650.00 diminution in value based solely on appraisal of the structural damage caused by the water.

7. Total insurance reimbursement for all structural damage was \$5,804.00. The Iversons disputed this compensation amount with the insurance company adjuster, but the company and adjuster would not change such amount and the Iversons eventually accepted this amount in order to get some money and commence the restoration of their home.

8. The Iversons calculated the claimed casualty loss as follows:

Appraised pre-loss value	\$71,400.00
Appraised post-loss value	59,750.00
Amount of loss	<u>\$11,650.00</u>
Insurance reimbursement	5,804.00
Unreimbursed loss	<u>\$ 5,846.00</u>
Less I.R.C. §165(c)(3) exclusion	100.00
Claimed casualty loss	<u><u>\$ 5,746.00</u></u>

The Iversons did restore their basement, using materials as nearly alike as those originally used, at a cost of approximately \$12,622.13.

CONCLUSIONS OF LAW

A. That subsection (a) of section 165 of the Internal Revenue Code ("I.R.C.") allows a deduction for "...any loss sustained during the taxable year and not compensated for by insurance or otherwise." In general, such loss, to be deductible, must be due to a sudden, unexpected or unusual event occasioned as the result of an external force [Matheson v. Comm., 54 F2d 53F, (2d Circ., 1931)].

B. That it is not disputed that a casualty loss occurred. Rather, disallowance of the claimed deduction for such loss was premised upon the assertion that the loss was fully reimbursed by insurance. Petitioner has established, via appraisals, the value of the property both before and after the loss and, in turn, the dollar amount of the structural damage upon which the claimed deduction was based. Accordingly, since the amount of such casualty loss for structural damage was not fully reimbursed by insurance or otherwise, petitioner was entitled to deduct the unreimbursed portion of the loss [as properly reduced by the limitation specified by I.R.C. §165(c)(3)].

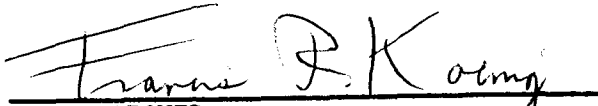
C. That the petition of James Iverson is hereby granted and the Notice of Deficiency dated March 30, 1982 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985


PRESIDENT


COMMISSIONER


COMMISSIONER