

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Lewis M. & Kitty M. Steel :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
Refund of NYS Personal Income Tax under Article :
22 of the Tax Law and Chapter 46, Title T of :
the Administrative Code of the City of New York :
for the Years 1979 & 1980.

State of New York :

ss.:

County of Albany :

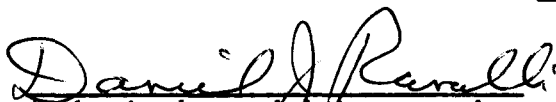
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of June, 1986, he/she served the within notice of Decision by certified mail upon Lewis M. & Kitty M. Steel the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

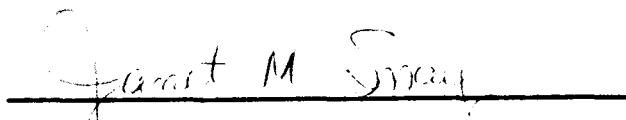
Lewis M. & Kitty M. Steel
101 Central Park West
New York, NY 10023

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
17th day of June, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Lewis M. & Kitty M. Steel :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :
Refund of NYS Personal Income Tax under Article :
22 of the Tax Law and Chapter 46, Title T of :
the Administrative Code of the City of New York :
for the Years 1979 & 1980.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of June, 1986, he served the within notice of Decision by certified mail upon Philip Tanz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip Tanz
Auslander & Tanz
11 Grace Avenue
Great Neck, NY 11021

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
17th day of June, 1986.

David J. Paralle
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

June 17, 1986

Lewis M. & Kitty M. Steel
101 Central Park West
New York, NY 10023

Dear Mr. & Mrs. Steel:

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 & 1312 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Philip Tanz
Auslander & Tanz
11 Grace Avenue
Great Neck, NY 11021

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEWIS M. STEEL and KITTY M. STEEL : DECISION
for Redetermination of a Deficiency or for :
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York :
City Personal Income Tax under Chapter 46, :
Title T of the Administrative Code of the City :
of New York for the Years 1979 and 1980.

Petitioners, Lewis M. Steel and Kitty M. Steel, 101 Central Park West, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1979 and 1980 (File No. 53201).

A 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 February 25, 1986 at 9:15 A.M., with all briefs to be submitted by March 25, 1986. Petitioners appeared by Philip Tanz., C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether casualty loss deductions claimed by petitioners in each of the years 1979 and 1980 are properly allowable.

FINDINGS OF FACT

1. Lewis M. Steel and Kitty M. Steel (hereinafter "petitioners") filed a New York State Income Tax Resident Return (with City of New York Personal

Income Tax) for each of the years 1979 and 1980. On their 1979 return they claimed a casualty loss deduction of \$6,900.00 (\$7,000.00 less \$100.00 limitation). On their 1980 return they claimed a casualty loss deduction of \$7,900.00 (\$8,000.00 less \$100.00 limitation).

2. On June 20, 1983, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioners wherein the aforestated casualty loss deductions were disallowed. Said statement included other technical adjustments which were conceded by petitioners and are therefore not at issue herein. Accordingly, a Notice of Deficiency was issued against petitioners on January 5, 1984 asserting additional 1979 and 1980 New York State and City personal income taxes of \$3,651.15, plus interest of \$1,376.52, for a total due of \$5,027.67.

3. On December 9, 1982, petitioners executed a consent form which extended the period for assessment of 1979 taxes to any time on or before April 15, 1984.

4. The casualty loss deduction claimed for 1979 of \$6,900.00 arose from accidental damage to an oriental rug. According to petitioners' representative, a bottle of red wine was inadvertently knocked off petitioners' table unnoticed. It was purportedly discovered the following day, by which time a stain had set permanently into the rug. The date of the accident was not provided at the hearing.

5. Petitioners submitted an appraisal from D. Kalfain & Son, Inc. dated October 2, 1979, wherein it is stated that:

"There is a damage on the open field which cannot be repaired completely. If rug were not damaged the replacement value would be \$10,000. As is the value would be \$3,000."

6. Petitioners' loss was not covered by their insurance policy. According to a letter from the insurance company claims representative, dated December 19, 1979, the basis for not covering such loss was as follows:

"Your policy covers your property on a 'named perils' basis. For a loss to be covered, it must result from a peril specifically listed in the policy contract. Your property is not covered for all risks of physical loss or damage.

Unfortunately, since none of the listed perils cover the loss to your oriental rug, we are unable to assist you."

7. Petitioners did not provide documentation to establish the basis of the oriental rug at issue.

8. The casualty loss deduction claimed for 1980 of \$7,900.00 arose from water damage to petitioners' house located on Surfside Drive, Long Island, New York.

9. Petitioners alleged that the water damage was due to a strong storm which swept through the area. The date during which the storm occurred was not provided. Water damage occurred to the roof as well as the walls and tiles of the bathroom.

10. Petitioners' loss was not covered by their insurance policy. According to a letter from the insurance company claims representative, dated November 3, 1980, the basis for not covering such loss was as follows:

"From the information submitted it appears the water probably came down the wall from a faulty roof which has since been fixed, and after a period of time the tile has become loose from the wall and will need repairs. Your policy on the house provides coverage for water damage when a storm has made an opening in the roof and water comes in through that opening and then there is coverage for the resulting water damage. However, there is an exclusion against a leak or seepage over a period of time where there is gradual deterioration."

11. Petitioners submitted copies of checks which purportedly established their cost to repair the damage to the house. Two checks totaling \$3,950.00, to General Roofing and Siding Co., were dated in September and November, 1979, which was prior to the alleged casualty. Three checks totaling over \$8,000.00 were written in April, May and June, 1981. Bills detailing the nature of the repairs were not submitted.

CONCLUSIONS OF LAW

A. That Internal Revenue Code section 165(c)(3) defines a casualty loss as a loss that arises from fire, storm, shipwreck, or other casualty.

B. That an allowable "other casualty" deduction under section 165(c)(3) of the Internal Revenue Code must be "a casualty of the same general nature or kind, as fires, storms, shipwreck." Ray Durden v. Commissioner, 3 T.C. 1, 4 (1944). See also Levy v. Commissioner, 212 F.2d 552 (5th Cir. 1954). An allowable "other casualty" is further defined as "an event due to some sudden, unexpected or unusual cause." (Citation omitted). Durden, 3 T.C. at 3. The term 'casualty' excludes the progressive deterioration of property through a steadily operating cause (Citation omitted)." Id.

C. That losses due to common, every day accidents or occurrences, as distinguished from sudden, unexpected or unusual causes are not deductible as casualty losses.

D. That Treasury Regulation §1.165-7(b) provides that:

"In the case of any casualty loss...the amount of loss to be taken into account for purposes of section 165(a) shall be the lesser of either --

(i) The amount which is equal to the fair market value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty; or

(ii) The amount of the adjusted basis..."

E. That the losses at issue were not casualty losses within the meaning and intent of section 165(c)(3) of the Internal Revenue Code. The damage to the rug was the result of a common every day accident. The damage to the house resulted from a steady deterioration through a steadily operating cause. Even if such losses could properly be defined as casualty losses, they would necessarily have to be disallowed in the instant case since the adjusted bases of the properties at issue were not provided and accordingly a dollar value of the losses could not be computed as required under Treasury Regulation §1.165-7(b).

F. That the petition of Lewis M. Steel and Kitty M. Steel is denied and the Notice of Deficiency issued January 5, 1984 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER