

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of

Frank J. & Jacquelyn D. Pelc :

AFFIDAVIT OF MAILING

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

State of New York :

ss.:

County of Albany :

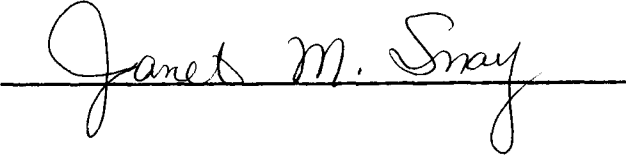
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Frank J. & Jacquelyn D. Pelc the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank J. & Jacquelyn D. Pelc  
477 Reserve Rd.  
West Seneca, NY 14224

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  
13th day of March, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Frank J. & Jacquelyn D. Pelc :

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for Redetermination of a Deficiency or Revision :  
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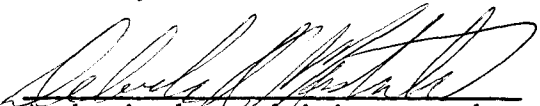
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he served the within notice of Decision by certified mail upon Paul E. Rudnicki, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

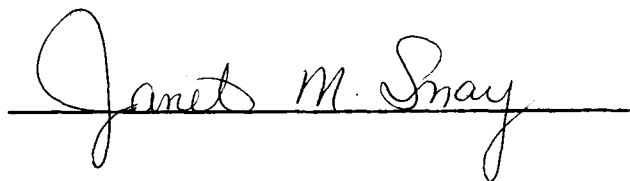
Paul E. Rudnicki  
2732 Seneca Street, P.O. Box 527  
West Seneca, NY 14224

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  
13th day of March, 1987.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_

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

March 13, 1987

Frank J. & Jacquelyn D. Pelc  
477 Reserve Rd.  
West Seneca, NY 14224

Dear Mr. & Mrs. Pelc:

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  
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:  
Paul E. Rudnicki  
2732 Seneca Street, P.O. Box 527  
West Seneca, NY 14224

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
FRANK J. PELC and JACQUELYN D. PELC	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1979.	:	

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Petitioners, Frank J. Pelc and Jacquelyn D. Pelc, 477 Reserve Road, West Seneca, New York 14224, 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.47549).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York on September 16, 1986 at 9:15 A.M. Petitioners appeared by Paul E. Rudnicki, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether petitioners substantiated their entitlement to a casualty loss deduction of \$20,684.00 for the year 1979.

FINDINGS OF FACT

1. Frank J. Pelc and Jacquelyn D. Pelc (hereinafter "petitioners") timely filed a joint New York State Income Tax Resident Return for the year 1979 on which they claimed a casualty loss in the amount of \$20,684.00.

2. On December 27, 1982, the Audit Division issued to petitioners a Statement of Personal Income Tax Audit Changes asserting tax due of \$1,174.18 plus interest of \$353.57 for a total amount due of \$1,527.75 for the year 1979.

The Statement of Personal Income Tax Audit Changes advised petitioners that their claimed casualty loss had been disallowed in full due to their failure to verify the cost and the fair market value of the property lost in the casualty. Accordingly, on March 10, 1983, the Audit Division issued to petitioners a Notice of Deficiency in the amount of \$1,174.18 plus interest of \$381.81, for a total amount due of \$1,555.99.

3. On March 5, 1979, petitioners' barn/garage and the contents thereof were lost due to a fire. Petitioners were insured through a homeowners policy issued by The Aetna Casualty and Surety Company ("Aetna") of Hartford, Connecticut. Pursuant to the terms of the policy and a subsequent amendment thereto, the total policy limit for the barn/garage was \$10,700.00. The policy limit for unscheduled personal property was \$22,500.00.

4. For the purpose of reaching a settlement with and receiving payment from Aetna, petitioners hired National Fire Adjustment Co., Inc. ("NFA"). In return for NFA's services, petitioners agreed to pay a fee equal to ten percent of the payment received from Aetna. NFA submitted an appraisal to Aetna which indicated a loss to petitioners in the amount of \$37,700.00. In its appraisal, NFA claimed a loss for the barn/garage in the amount of \$22,452.77. Aetna agreed to pay the policy limit of \$10,700.00 for the barn/garage and agreed to a loss and claim figure of \$6,215.83 for the personal property contained in the barn/garage, for a total payment of \$16,915.83. Petitioners, therefore claimed a casualty loss, after insurance reimbursement and \$100.00 exclusion, of \$20,684.00

5. Petitioners submitted no evidence regarding the cost or dates of purchase of any of the items of personal property claimed to have been destroyed in the barn/garage fire. By a letter dated September 18, 1984, NFA advised

petitioners' representative, Paul E. Rudnicki, Esq., that Aetna had agreed that the loss to the barn/garage was in the sum of \$13,000.00, but since this amount exceeded the total policy coverage for the building, the policy limit of \$10,700.00 was paid by Aetna for the barn/garage. Petitioners produced no evidence, at the hearing held herein, that Aetna had agreed to a loss for the barn/garage which exceeded the insurance policy limits.

CONCLUSIONS OF LAW

A. That section 165 of the Internal Revenue Code provides, in pertinent part, as follows:

"(a) General rule. -- There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

\* \* \*

(c) Limitation on losses of individuals. -- In the case of an individual, the deduction under subdivision (a) shall be limited to --

\* \* \*

(3) losses of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft. A loss described in this paragraph shall be allowed only to the extent that the amount of loss to such individual arising from each casualty, or from each theft, exceeds \$100. For purposes of the \$100 limitation of the preceding sentence, a husband and wife making a joint return under section 6013 for the taxable year in which the loss is allowed as a deduction shall be treated as one individual."

B. That Treasury Regulation §1.165-7(a)(2)(i) provides that:

"In determining the amount of loss deductible under this section, the fair market value of the property immediately before and immediately after the casualty shall generally be ascertained by competent appraisal. This appraisal must recognize the effects of any general market decline affecting undamaged as well as damaged property which may occur simultaneously with the casualty, in order that any deduction under this section shall be limited to the actual loss resulting from damage to the property."

C. That Treasury Regulation §1.165-7(b)(1) provides, in pertinent part, as follows:

"In the case of any casualty loss whether or not incurred in a trade or business or in any transaction entered into for profit, 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 prescribed in § 1.1011-1 for determining the loss from the sale or other disposition of the property involved."


D. That while it is undisputed that petitioners incurred a loss arising from fire, petitioners have not met their burden of proving the cost or fair market value of the personal property lost or damaged in the fire. In addition, petitioners have failed to meet their burden of proving that they incurred a loss which exceeded the insurance reimbursement paid for the loss and/or damage to their barn/garage.

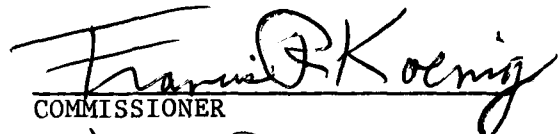
E. That the petition of Frank J. Pelc and Jacquelyn D. Pelc is denied and the Notice of Deficiency dated March 10, 1983 is sustained.

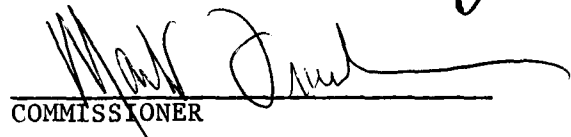
DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER