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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations**A-2**Morrison, Dorothy  
and  
Harold*

TO: Commissioners Murphy, Palestin and Macduff

FROM: Solomon Sies, Hearing Officer

SUBJECT: HAROLD MORRISON & DOROTHY MORRISON, his wife

1961 Deficiency - Article 22

File No. 1-6051399

A hearing with reference to the above matter was scheduled before me at 80 Centre Street, New York, N.Y. on October 14, 1961. The taxpayers did not appear at the hearing but have stipulated that a decision may be made in the matter based upon the record as it is presently constituted.

The issue involved herein is whether the taxpayers have established that the loss of certain jewelry was occasioned by theft.

During the early part of September, 1961, the taxpayers were vacationing at the Copsake Country Club in Craryville, New York. They kept in a jewelry box certain jewelry consisting of two diamond rings and a diamond wrist watch which was left in a chest drawer of the hotel room which they occupied. They left the hotel and returned home on or about September 12, 1961. The loss of the jewelry was discovered as missing on or about September 21, 1961 at which time the hotel management was notified. The State Police at Claverack, N.Y. was notified of the loss on September 22, 1961. The value of the jewelry at that time was given at \$1500.00. The taxpayers claim that this was the estimated value and the real worth of the jewelry was subsequently ascertained to be \$2500.00. The taxpayers were covered by a homeowner's insurance policy, blanket coverage, in the sum of \$500.00 which they received and claim a loss by theft in the sum of \$2000.00. It does not appear that said policy required actual proof of theft. The jewelry was never recovered or found. In a questionnaire submitted concerning the loss, the taxpayers stated that: "Theft suspected, may have been loss". The taxpayers have submitted conflicting statements as to the date of loss, the value of the jewelry and the circumstances under which the loss occurred.

In the case of Allen v. C.I.R., 16 T.C. 161, there was no proof of theft and it was held that suspicion of a theft was not enough to bring the loss within section 23 (e) (3) Internal Revenue Code, 1939.

In the case of Blakewell v. C.I.R., 23 T.C. 803, it was held that mere disappearance of the taxpayer's wallet from his person without proof that it was stolen was insufficient to entitle him to theft deduction under section 23 (e) (3).

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RE: HAROLD MORRISON & DOROTHY MORRISON

It is to be noted that section 165 (e) (3), Internal Revenue Code, contains provisions similar to those formerly contained in section 23 (e) (3), Internal Revenue Code, 1939.

I am of the opinion that the taxpayers have failed to sustain the burden of proof in establishing that the loss of the jewelry was occasioned by theft.

For the reasons stated above, I recommend that the decision of the Tax Commission in the above matter be substantially in the form submitted herewith.

NOV 1 - 1965

SOLOMON SIES

Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

S. HECKELMAN

Approved.

SS:tc (January 7, 1966)

**STATE OF NEW YORK  
STATE TAX COMMISSION**

**-----  
IN THE MATTER OF THE PETITION**

**OF**

**HAROLD MORRISON & DOROTHY MORRISON,  
his wife**

**FOR A REDETERMINATION OF A DEFICIENCY OR  
FOR REFUND OF PERSONAL INCOME TAXES UNDER  
ARTICLE 22 OF THE TAX LAW FOR THE YEAR  
1961.**  
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The above mentioned taxpayers having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961 (File No. L-6053399) and a notice of formal hearing having been mailed to the taxpayers on October 14, 1963, scheduling a formal hearing to be held at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 14th day of October, 1961, at 2:30 P. M. before Solomon Sles, Hearing Officer of the Department of Taxation and Finance and the taxpayers having failed to appear at such hearing and having stipulated that they waive such hearing and consent that the matter be decided on the record as it is presently constituted and the matter having been examined and considered,

**The State Tax Commission hereby finds:**

(1) That the taxpayers filed a New York State resident income tax return for the year 1961 in which they reported total income in the sum of \$24,355.77 and indicated itemized deductions from Federal return in the sum of \$3700.00, which included a deduction for "stolen jewelry--\$2,000.00 (not reimbursed by insurance)"; that on April 10, 1963, the taxpayers filed an amended return for the year 1961 showing total income in the sum of \$30,494.27 and included the deduction previously mentioned; that on September 8, 1964, the Department of Taxation and Finance mailed to the taxpayers a statement of audit changes for the year 1961 disallowing the deduction of \$2,000.00 on

the ground that it was not definitely established that the items were stolen rather than lost and imposed additional personal income tax with interest in the sum of \$228.79 and accordingly issued a deficiency therefor.

(2) That the taxpayers, during the early part of September, 1961, were vacationing at Copake Country Club, Craryville, New York; that the taxpayer Dorothy Morrison took with her to said resort hotel two diamond rings and a diamond wrist watch, which was kept in a jewelry box in the hotel room occupied by the taxpayers; that "the jewelry was not all worn at any one time"; that "the entire jewelry box and all of the jewelry disappeared" (letter of taxpayer dated November 7, 1963); that the taxpayers left the resort hotel and arrived home on September 12, 1961; that the taxpayers did not discover the loss of the jewelry until September 21, 1961; that the hotel management was notified of the loss on September 21, 1961 and the New York State Police was notified of the loss on September 22, 1961; that the value placed upon the jewelry at that time (September 22, 1961) was \$1500.00; that it is claimed that the value of \$1500.00 was estimated and that the exact value was subsequently ascertained to be \$2500.00; that the taxpayers were covered by a homeowner's policy, blanket coverage, in the sum of \$500.00, which they received from the insurance company; that it has not been shown that the aforementioned insurance policy covered loss solely by theft; that the aforementioned jewelry was never found or returned to the taxpayers.

(3) That on August 28, 1963, the taxpayers submitted a questionnaire, Casualty or Theft Loss (Form IT-3319, on which they indicated the loss of jewelry—"2 diamond rings and a diamond wrist watch with band, original cost \$3,000.00, date loss occurred, September 10, 1961, theft suspected, may have been loss".

(4) That the taxpayers have failed to establish that the loss of the jewelry heretofore mentioned was occasioned by theft.

Based upon the foregoing findings, the State Tax Commission hereby

**REPRESENTATIONS AND DECISION:**

(A) That the taxpayers have failed to establish that the deduction claimed by them for the year 1961 in the sum of \$2,000.00 was in fact a loss occasioned by theft; that the mere suspicion of theft is not sufficient to bring the loss within the provisions allowing losses due to theft.

(B) That, accordingly, the statement of audit changes and notice of deficiency are correct and the taxpayers' petition for redetermination of a deficiency for the year 1961 be and the same is hereby dismissed.

**DATED:** Albany, New York, on the 19th day of January , 1966.

**STAFF TAX COMMISSIONER**

/s/

**JOSEPH H. MURPHY**

**President**

/s/

**IRA J. PALESTIN**

**Commissioner**

/s/

**JAMES R. MACDUFF**

**Commissioner**