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STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
CHARLES A. SARETSKY and BERDE  
SARETSKY  
For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1963

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AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

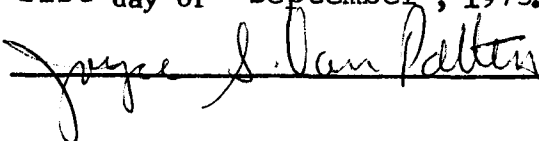
State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon Charles A. and Berde Saretsky (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Charles A. Saretsky  
176 Beach 143rd Street  
Neponsit, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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  
21st day of September , 1973.





STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of  
CHARLES A. SARETSKY and BERDE :  
SARETSKY :  
For a Redetermination of a Deficiency or :  
a Refund of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the (Year(s) 1963 :

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AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon Harry Lewis Stone, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Harry Lewis Stone, C.P.A.  
521 Fifth Avenue  
New York, New York 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

21st day of September , 1973

Joyce S. Van Patten

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
Mario A. Procaccino,  
~~XXXXXXXXXXXX~~ PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**September 21, 1973**

**Mr. & Mrs. Charles A. Saretsky  
176 Beach 143rd Street  
Neponsit, New York**

**Dear Mr. & Mrs. Saretsky:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 Months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
CHARLES A. SARETSKY and :  
BERDE SARETSKY : DECISION  
for Redetermination of Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1963. :

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Charles A. Saretsky and Berde Saretsky filed a petition pursuant to section 689 of the Tax Law for redetermination of deficiency in personal income tax under Article 22 of the Tax Law for the year 1963.

A hearing was held on December 10, 1967, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Francis V. Dow, Hearing Officer. Petitioners, Charles A. Saretsky and Berde Saretsky, were represented by Harry Lewis Stone, C.P.A.

The record of said hearing has been duly examined and considered.

#### ISSUES

The issues are: (1) whether the monies spent by petitioners on income producing property were for repair or were capital expenditures and (2) whether monies received by petitioners from a lessee in consideration of relieving lessee of claims held by petitioner was income or return of capital.

#### FINDINGS OF FACT

1. Petitioner, Berde Saretsky, was the owner of a garage

premise at 334 to 340 West 40th Street, New York, New York.

This garage premise had been leased to the Hertz Corporation, 660 Madison Avenue, New York, New York, for a term of ten years commencing on February 25, 1960, and ending on February 24, 1970.

2. On October 19, 1963, a roof truss in the garage premise collapsed causing the roof to cave in and damaged the first and second floors of the garage. Thereafter, Hertz Corporation, surrendered possession of said premises claiming it untenable and unfit for occupancy. Petitioner, Berde Saretsky, claimed that Hertz Corporation had no right to cancel the lease and that Hertz Corporation was liable for the collapse of the roof by its own negligence in parking cars on the roof causing the roof to weaken.

3. Pursuant to an agreement on November 26, 1963, between Hertz Corporation and petitioner, Berde Saretsky, the petitioner was paid \$23,500.00 by Hertz Corporation. This payment was in consideration of petitioner, Berde Saretsky, cancelling the lease and releasing Hertz Corporation for any present or future rents and for any claims for damages that may be asserted by petitioner against Hertz Corporation.

4. The petitioners claimed a casualty loss on their 1963 return amounting to \$22,309.66 (\$45,809.66 which represented the amount necessary to put the garage in the same condition as before the collapse, less \$23,500.00 received from Hertz Corporation). The petitioners claimed at the hearing that the casualty loss amount should be instead a repair expense of \$23,395.63.

(\$46,895.63 now claimed for repairs less \$23,500.00 received from Hertz Corporation).

5. The garage premise had a cost basis at the end of 1963 of \$825.97.

6. Petitioners did not state at the hearing what portion of the \$23,500.00 received from Hertz Corporation pursuant to the agreement was for rents, present and future, and what portion was in settlement of damages.

7. Petitioners claimed they spent \$4,085.70 in legal and other fees in assessing their damage to the garage and in preparing possible litigation against Hertz Corporation.

#### CONCLUSIONS OF LAW

A. Since there is difficulty in apportioning the payment of \$19,414.30 (\$23,500.00 less \$4,085.70 for legal and other fees) received by petitioner from Hertz Corporation, between loss of income and a return of capital, a reasonable estimate must be made (Cohen v. Commission, 39 F. 2d 540). An amount of \$10,000.00 is deemed to be in receipt of ordinary income and is to be taxed as such. The remaining amount received, \$8,588.33 (\$9,414.30 less \$825.97 cost basis of building), is deemed to be an excess return of capital and is to be taxed as capital gain.

B. The amount of \$46,895.63 claimed as repairs is deemed to be a capital expenditure and may be added to the cost basis of the property.

#### DECISION

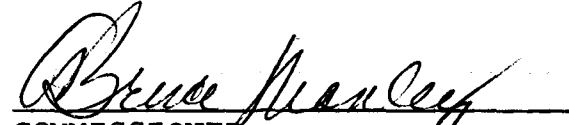
The deficiency is recomputed to be \$364.28 plus interest

of \$56.44 to date of deficiency November 14, 1966, together with such further interest as may be due under section 684 of the Tax Law; in all other respects the petition is denied.

DATED: Albany, New York  
September 21, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER