

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CIRO GAONA, and of  
FLOR M. GAONA, his wife

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)~~ 1966.

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

State of New York  
County of Albany

JANET MACK

, 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 23rd day of May, 1975, she served the within  
Notice of Decision (~~on the 23rd day of May, 1975~~) by (certified) mail upon CIRO GAONA, and of  
FLOR M. GAONA, his wife (~~representative of the~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

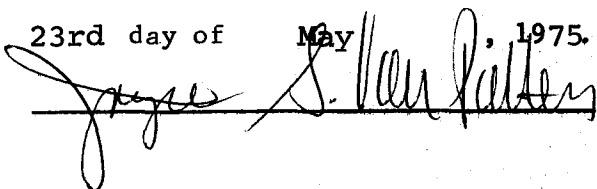
Mr. and Mrs. Ciro Gaona  
423 Wicks Road  
Brentwood, New York 11717

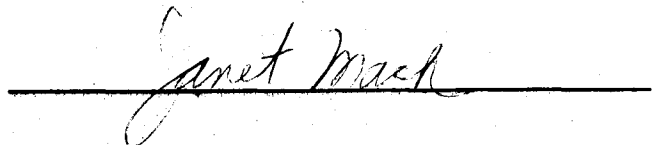
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

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

23rd day of May, 1975.







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2696

DATED: Albany, New York  
May 23, 1975

Mr. and Mrs. Ciro Gaona  
423 Wicks Road  
Brentwood, New York 11717

Dear Mr. and Mrs. Gaona:

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

Please take further notice that pursuant to  
Section ~~(a)~~ **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: ~~Re: Gaona, Ciro~~  
Law Bureau

AD-1.12 (8/73)

## STATE TAX COMMISSION

In the Matter of the Petitions :  
of :  
CIRO GAONA, and of :  
FLOR M. GAONA, his wife : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the Year 1966. :

A hearing was duly held on February 7, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner, Ciro Gaona, appeared in person and without a representative. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James Scott, Esq., of counsel. The record of said hearing has been duly examined and considered.

The issue in this case is whether petitioner suffered a deductible loss.

FINDINGS OF FACT

1. Mr. Ciro Gaona, a petitioner herein, purchased a 1965 Cadillac Coupe de Ville from Carmello del Valle of 601 West 91st Street, New York City, on December 28, 1965. This was valued at \$4,400.00 wholesale to \$5,000.00 retail. The purchase price was \$3,000.00, plus a trade in of Mr. Gaona's 1962 Oldsmobile Starfire. This was valued at \$1,400.00 wholesale to \$1,900.00 retail. Mr. Gaona later paid a sales tax on this based on the \$3,000.00 cash payment.

2. Mr. Gaona registered the Cadillac in the name of Gaona Brothers Inc. of Huntington, New York, a corporation of which he and his brother, Calirito Gaona, were the sole shareholders. This corporation operated a gasoline service station with two repair bays. The corporation did not, however, record the car as its own asset, nor depreciate it. The registration was solely to qualify the car under the corporation's garage liability insurance policy and was done with the knowledge and consent of the corporation's insurance agent. The corporation had filed its Federal tax returns as a "Subchapter S" corporation and petitioners, therefore included one-half of the corporate income in their own tax returns.

3. On January 28, 1966, the police came to Mr. Gaona's garage and confiscated the car. The petitioner was indicted with receiving stolen property. He was tried on that charge on January 4, 1968. During said trial, the defendant's motion to dismiss the indictment was granted on the grounds that the people failed to prove a prima facie case.

4. Mr. Gaona has received no insurance proceeds for the car. The insurance company would not cover the car on the grounds that when it was acquired by Mr. Gaona it was a stolen car.

5. Mr. and Mrs. Gaona claimed a loss of \$4,500.00 on their tax return and deducted \$4,400.00. The deficiencies add this amount back to income dividing it between Mr. and Mrs. Gaona, who had filed a combined New York tax return.

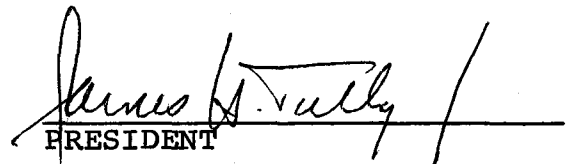
CONCLUSIONS OF LAW

A loss was sustained by petitioners during the taxable year.

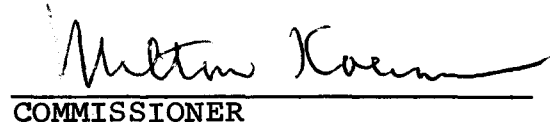
The deficiency is found erroneous in its entirety and is cancelled.

DATED: Albany, New York  
May 23, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER