

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROSS H. DORFMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(6)~~ 22 of the :
Tax Law for the Year ~~(1967)~~ 1968. :
1968.

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Ross H.
Dorfman ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Ross H. Dorfman
380 Mountain Road
Union City, New Jersey 07087
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 Postal Service within the State of New York.

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

16th day of August, 1977.

Marsina Donnini

Just Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROSS H. DORFMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (8) ~~11~~ of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1968.

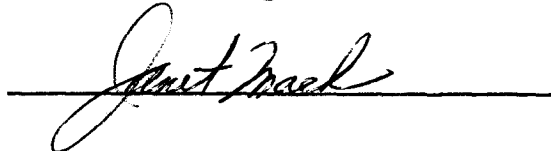
State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within
Notice of Decision by (certified) mail upon and Lawrence Blau, Accountant
of Goldstein, Golub, Kessler & Company, P.C.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Martin Rotheim, CPA
and Lawrence Blau, Accountant
Goldstein, Golub, Kessler & Company, P.C.
245 Park 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 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

16th day of August, 1977.







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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 16, 1977

Mr. Ross H. Dorfman
380 Mountain Road
Union City, New Jersey 07087

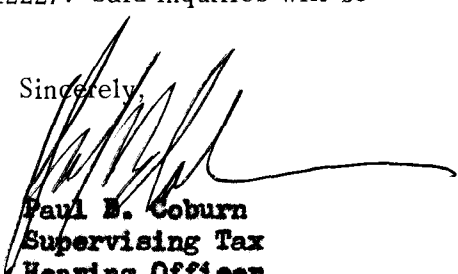
Dear Mr. Dorfman:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~182~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul E. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROSS H. DORFMAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year 1968.	:	

Petitioner, Ross H. Dorfman, residing at 380 Mountain Road, Union City, New Jersey 07087, has filed a petition for redetermination of a deficiency or refund of personal income tax under Article 22 of the Tax Law for the year 1968. (File No. 10594).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on December 13, 1976 at 2:45 P.M. Petitioner appeared by Goldstein, Golub, Kessler & Company, P.C., by Martin Rotheim, CPA and Lawrence Blau, Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq., of counsel).

ISSUE

Whether the petitioner sustained a deductible loss for the tax year 1968 and, if not, whether, alternatively, the petitioner can claim depreciation with respect to a herd of cattle in lieu of a deductible loss relative thereto.

FINDINGS OF FACT

1. Petitioner filed a New York State income tax resident return for the year 1968 in which he reported that his total income for said year was the sum of \$172,491.00 and in which he claimed deductions totalling \$164,031.00 and taxable income of \$11,860.00.

2. Petitioner claimed, as alleged in the petition herein dated July 6, 1972, that \$149,900.00 of said total deduction of \$164,031.00 represented a "casualty loss" arising from "theft".

3. On April 10, 1972, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency, disallowing the deduction of said claimed loss of \$149,900.00, correcting the New York taxable income from \$11,860.00 to \$161,760.00 and imposing additional personal income tax of \$20,617.40 and interest of \$3,696.08 or a total deficiency including interest of \$24,313.48.

4. On or about December 27, 1968, the petitioner deposited the sum of \$150,000.00 with one Anne Lamont, vice-president of Myerson & Co., Inc. engaged in the stock brokerage, investment and securities business, in connection with a proposal for the purchase of 150 heifers owned by Carlo M. Paterno, d/b/a Meadow Lane Farm, for a total purchase price of \$450,000.00.

5(a). On or about April 10, 1969, an action was instituted in the Supreme Court of the State of New York, County of New York, on behalf of the petitioner as plaintiff by Bobroff, Olonoff & Scharf as his attorneys, against said Anne Lamont, Meyerson & Co., Inc. and Carlo M. Paterno, d/b/a Meadow Lane Farm as defendants, for the recovery of the said sum of \$150,000.00.

(b). The complaint in said action alleges in part in its first cause of action that the "plaintiff deposited with defendants the sum of One Hundred Fifty Thousand Dollars (\$150,000) with the understanding that if all the terms and conditions of a proposed transaction for the purchase by plaintiff, from or through defendants of one hundred fifty (150) heifers did not meet the plaintiff's wishes and desires in each and every respect ... or, if for any reason, or cause whatsoever, plaintiff did not wish to proceed with the proposed transaction as not being suitable or desirable to him in his sole discretion and judgment, the said deposited sum would be returned to him immediately upon plaintiff's request therefor..."

Said first cause of action further alleges in part that plaintiff and defendants "failed to reach a meeting of the minds and plaintiff refused to proceed any further with the negotiation of or to approve, the said proposed transaction...and plaintiff requested and demanded the return of his deposit moneys of \$150,000 pursuant to his arrangement with defendants, which request and demand was refused..."

(c) The second cause of action incorporates the aforesaid allegations and alleges in part that in order "to induce plaintiff to deliver to them the said \$150,000 deposit ... the defendants falsely and fraudulently ... caused defendant Lamont to represent to plaintiff in substance and effect...that defendants...intended to return to plaintiff his said moneys placed on deposit with them upon demand, whenever he wished and without question or demand..."

Said second cause of action further alleges in part that a typewritten prospectus furnished to plaintiff "was materially false and misleading..." in various respects stated in said second cause of action.

6. On or about October 6, 1969, a stipulation discontinuing the aforesaid action was signed by the attorneys representing the plaintiff, the petitioner herein, and the defendants therein named, the sum of \$144,500 was returned to the petitioner and, in consideration thereof the petitioner assigned to Carlo M. Paterno, one of said defendants, "all of his right, title and interest in and to the claim asserted in the complaint against Carlo M. Paterno, d/b/a Meadow Lane Farm..."

7. On or about January 28, 1976, the petitioner's accountants submitted to the Income Tax Bureau copies of two lists as follows:

One of said lists hereafter described as "Schedule 1", "contains, among other things, the names of 149 "animals" and, in addition the names of 27 "bull calves" together with their "Reg. No.", their "calving dates" and "breeding status".

The other of said lists, hereafter described as "Schedule 2", contains, among other things, the names of 150 animals, their ages as of August 1, 1968,

their "remaining months" and a schedule of alleged "1968 depreciation" as to each of said animals, the aggregate amount of which is alleged to be the sum of \$107,030.50.

CONCLUSIONS OF LAW

A. That the petitioner has failed to sustain the burden of proof that he suffered either a casualty loss or a loss by reason of theft or fraud or otherwise in the tax year 1968.

B. That the petitioner's loss, if any, arose out of a transaction entered into for profit and the year of settlement, namely 1969, of the aforesaid action instituted by the petitioner on or about April 6, 1969, determines the time when, the loss, if any, is established.

C. That the petitioner failed to sustain the burden of proof that he acquired title to a herd of 150 cattle or any part thereof described in either "Schedule 1" or "Schedule 2".

D. That in addition to the petitioner's failure to establish ownership of the herd of cattle or any part thereof described in either "Schedule 1" or "Schedule 2", the evidence does not establish the amount of "1968 depreciation", if any, of said herd or any part thereof.

E. That the petition of Ross H. Dorfman is denied and the Notice of Deficiency issued on April 10, 1972 is sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER