

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE C. and LUCIA F. BARRETT

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year ~~(x) or Period (x)~~ 1972.:

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of April, 1978, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Lawrence C. & Lucia F.
Barrett (~~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. Lawrence C. Barrett
c/o Mawhinney, Waack and Barrett
2005 West Genesee Street
Syracuse, New York 13219
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~~
~~xxxx~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

17th day of April, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE C. and LUCIA F. BARRETT

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(x)~~ 22 of the :
Tax Law for the Year ~~(x) 1971~~ 1972. :

AFFIDAVIT OF MAILING

State of New York
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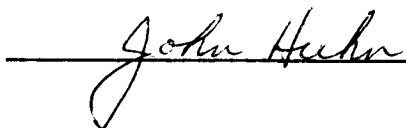
John Huhn , being duly sworn, deposes and says that
~~he~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of April , 1978, ~~he~~ he served the within
Notice of Decision by (certified) mail upon Arnold J. Hodes
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Arnold J. Hodes, CPA
Sidney Josef & Co.
2030 Erie Boulevard, East
Syracuse, New York 13224
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

17th day of April , 1978.







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

April 17, 1978

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

**Mr. & Mrs. Lawrence C. Barrett
c/o Mawhinney, Waack and Barrett
2005 West Genesee Street
Syracuse, New York 13219**

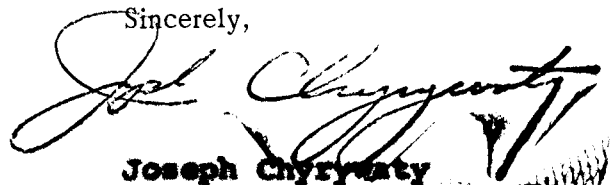
Dear Mr. & Mrs. Barrett:

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 **(4) 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,


**Joseph Chryzasty
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LAWRENCE C. AND LUCIA F. BARRETT : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1972. :
:

Petitioners, Lawrence C. and Lucia F. Barrett, c/o Mawhinney, Waack and Barrett, 2005 West Genesee Street, Syracuse, New York 13219, 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 1972 (File No. 10944).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on July 28, 1977 at 2:45 P.M. Petitioners appeared by Arnold J. Hodes, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioners were entitled to a casualty loss deduction for a diamond ring which was allegedly stolen in 1972.

FINDINGS OF FACT

1. Petitioners, Lawrence C. and Lucia F. Barrett, timely filed a New York State personal income tax return for the year 1972 in

which they deducted a casualty loss in the amount of \$1,300.00 allegedly due to the theft of a white-gold, diamond dinner ring.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioners imposing additional personal income tax for the year 1962, on the grounds that they failed to substantiate that the item was stolen rather than lost. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the amount of \$200.56 in additional personal income tax, plus \$38.12 in interest, for a total due of \$238.68.

3. Petitioners were away from their home and on vacation from February 1, 1972 to February 15, 1972. While on vacation, they left behind two children and a nursemaid. During this period, the interior of the house was painted and two painters came and went freely. Petitioners contended that upon their return, they found an open jewelry box in a drawer from which a white-gold, diamond dinner ring was missing.

4. Petitioners had a home owner's insurance policy which partially covered the theft of jewelry; however, no claim was made by petitioners to the insurance company to recover part of the alleged theft loss. Two weeks after petitioners had returned from vacation and had become aware of the alleged theft, they informed the police of the loss and filed a police report. The alleged crime was never solved by the police.

5. Petitioners failed to prove by documentary or other satisfactory evidence that the ring was actually stolen and not lost.

CONCLUSIONS OF LAW

A. That petitioners, Lawrence C. and Lucia F. Barrett, failed to sustain the burden of proof necessary to show that they realized a deductible casualty loss pursuant to section 165 of the Internal Revenue Code.

B. That the petition of Lawrence C. and Lucia F. Barrett is denied and the Notice of Deficiency issued October 27, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER