

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EMIL AND PAULA FREUND

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income Tax :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1968, 1969, 1970.

State of New York
County of Albany

John Huhn, 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 4th day of May, 1979, she served the within
Notice of Decision by (certified) mail upon Emil and Pauls Freund

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

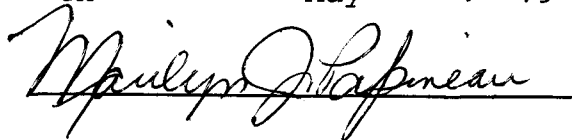
Emil and Paula Freund
230-174 Street, Apt. 2109
Miami Beach, FL 33160

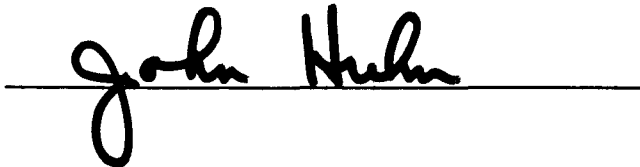
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

4th day of May, 1979.







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

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

May 4, 1979

Emil and Paula Freund
230-174 Street, Apt. 2109
Miami Beach, FL 33160

Dear Mr. & Mrs. Freund:

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(s) **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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EMIL FREUND and PAULA FREUND : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1968, 1969 and 1970. :
:

Petitioners, Emil Freund and Paula Freund, 230-174 Street (Apt. #2109), Miami Beach, Florida 33160, filed a petition for re-determination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1969 and 1970 (File No. 01098).

On February 8, 1978, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

I. Whether petitioners properly claimed a carry-forward loss for 1968, 1969 and 1970, which resulted from expropriation of property by the Czechoslovakian Government in 1954.

II. Whether the Income Tax Bureau had the authority to issue a Notice of Deficiency for 1968 after notifying petitioners that their tax return for said year was accepted as filed, and whether it had the authority for said year to issue a Notice of Claim for additional tax after a petition was filed by petitioners.

FINDINGS OF FACT

1. Petitioners, Emil Freund and Paula Freund, timely filed New York State personal income tax returns for 1968, 1969 and 1970, on which they claimed carry-over losses which resulted from the expropriation of property by the Czechoslovakian Government.

2. The Income Tax Bureau recomputed the carry-over loss claimed for the years 1962 through 1968 and determined that a remaining loss of \$1,420.31 was available for 1968 and that no loss remained as a carry-over to 1969 and 1970. Accordingly, it issued a Notice of Deficiency on December 28, 1973 for 1968, 1969 and 1970 in the amount of \$5,903.90 in personal income tax, plus \$1,247.23 in interest, for a total of \$7,151.13. On June 11, 1974, a Notice of Claim was issued by the Income Tax Bureau, asserting a greater deficiency than that shown on the Notice of Deficiency for 1968. The Notice of Claim was for \$178.35 in additional personal income tax due, which resulted from the disallowance of the \$1,420.31 carry-over loss previously allowed on said Notice. The Income Tax Bureau contended that because the property was confiscated in 1954, it was not applicable as a carry-forward loss to 1968.

3. Petitioners owned various properties in Czechoslovakia which were expropriated without compensation by the Czechoslovakian Government in 1954. In 1962 pursuant to the International Claims Settlement Act of 1949, as amended, the amount of final award to

petitioners as a result of the expropriation was determined to be \$119,502.94. The amount of \$7,285.21 was paid to petitioners leaving a balance of \$112,217.73. Said balance was lost to petitioners since funds available from Czechoslovakia for award purposes were exhausted and no additional funds were forthcoming.

4. Petitioners contended that there was an additional expropriation loss which offset the balance of remaining income for 1968 and of all income for 1969 and 1970. This additional loss of \$50,000.00 resulted from the expropriation of a house in Czechoslovakia during 1954. Petitioners had inherited one-half interest in the house and had assigned their interest to other parties in 1947. However, the assignment was subsequently in dispute and subject to litigation. Petitioners did not submit evidence to show that they had title to one-half of the property when it was expropriated in 1954. They did not file a claim with the Foreign Claims Settlement Commission.

5. On October 16, 1969, the Income Tax Bureau sent petitioners form letter IT-2343.1 regarding 1968 which stated, "based on present information, no change is necessary. Accordingly, the return will be accepted as filed at this time."

6. Petitioners executed waivers extending the period of limitations on assessment for 1968 and 1969 to April 15, 1974.

CONCLUSIONS OF LAW

A. That petitioners, Emil Freund and Paula Freund, improperly claimed a carry-forwarded loss in 1968 for the loss they incurred as a result of the expropriation of their property by the Czechoslovakian Government in 1954, since said loss could only be carried forward five years from the year of the loss, in accordance with the meaning and intent of section 1212 of the Internal Revenue Code, and since the loss year was 1954 when said property was nationalized.

B. That petitioners, Emil Freund and Paula Freund, did not sustain the burden of proof necessary to show that they owned or had any interest in the property described in Finding of Fact "4" at the time it was expropriated in 1954; therefore, they improperly claimed an expropriation loss on said property for 1968, 1969 and 1970.

C. That the Income Tax Bureau had the authority to issue a Notice of Deficiency for 1968 after previously accepting petitioner's 1968 personal income tax return as filed, since the Notice of Deficiency was issued within the prescribed period of limitations on assessment, as extended by waiver, in accordance with section 683(c)(2) of the Tax Law. The Notice of Claim issued subsequent to the Notice of Deficiency and after the petition was filed was properly issued, in accordance with section 689(d)(1) of the Tax Law.

D. That the petition of Emil Freund and Paula Freund is denied and the Notice of Deficiency issued December 28, 1973, together with the Notice of Claim issued June 11, 1974, are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

May 4, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER