

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Benjamin C. Klores :
and Anna Klores : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1974. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by certified mail upon Benjamin C. Klores, and Anna Klores, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

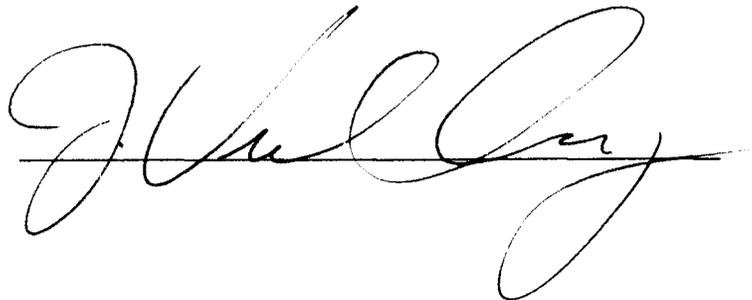
Benjamin C. Klores
and Anna Klores
141-16 72nd Crescent
Kew Garden Hills, NY 11367

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of October, 1980.

Dorothy A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Benjamin C. Klores :
and Anna Klores : AFFIDAVIT OF MAILING
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Personal Income Tax :
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for the Year 1974. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by certified mail upon Nathan Goldman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Nathan Goldman
68-147 Street
Flushing, NY 11367

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 October, 1980.

Deborah A. Bark

J. Vredenburg

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

October 17, 1980

Benjamin C. Klores
and Anna Klores
141-16 72nd Crescent
Kew Garden Hills, NY 11367

Dear Mr. & Mrs. Klores:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Nathan Goldman
68-147 Street
Flushing, NY 11367
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BENJAMIN C. KLORES and ANNA KLORES
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1974.

DECISION

Petitioners, Benjamin C. Klores and Anna Klores, 141-16 72nd Crescent, Kew Gardens Hills, New York 11367, 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 1974.

A formal hearing was held before David Evans, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 17, 1979 at 3:25 P.M. Petitioners appeared by Nathan Goldman, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners established the cost basis of real property for which they received a condemnation award.

FINDINGS OF FACT

1. On October 6, 1976, the Audit Division issued a Statement of Audit Changes against Benjamin C. Klores and Anna Klores, his wife, for the year 1974, imposing additional personal income tax of \$5,003.22, plus interest of \$935.60, for a total of \$5,938.82.

The Statement of Audit Changes contained the following explanation:

"Since you failed to submit the information requested in our letters of January 9, 1976 and April 8, 1976 adjustment is made based on available information."

Said statement showed the following computation:

N.Y. Taxable Income per return		\$ 6,188.44	
Adjustment (Condemnation award)		<u>40,129.16</u>	
Corrected N.Y. Taxable Income		\$46,317.60	
Total Tax on above	\$5,257.64		
Tax previously stated	<u>254.42</u>		
Additional Personal Income Tax Due			\$5,003.22

Accordingly, a Notice of Deficiency was issued on June 27, 1977.

2. Petitioners were advised on January 9, 1976 that information available disclosed that during 1974 they received a condemnation award on property located in New York State. They were requested to complete a condemnation award questionnaire which was enclosed, but failed to do so. A follow-up letter was sent to Mr. and Mrs. Klores on April 8, 1976, but there was no response.

3. Petitioners filed a perfected petition in February of 1978 in which they claimed that no allowance was made for the cost of the property involved in the condemnation proceeding. Although petitioners claimed that the original cost basis of the real property was \$54,000.00 and further contended that they suffered capital losses during the year 1974, they did not submit evidence to substantiate such claims.

4. Petitioner's attorneys submitted a closing statement filed by Romano & Schenker, indicating that a condemnation award was made to petitioners on November 14, 1974 in the amount of \$78,129.16. Said amount was comprised of payments to petitioners of \$63,587.43, payments to attorneys of \$1,953.23, payments for liens, assignments, claims and expenses on behalf of client for taxes, water, etc. of \$11,869.33, and itemized expenses and disbursements for services rendered of \$719.17.

5. Petitioners submitted other documents which did not substantiate the cost basis of the property.

6. Benjamin C. Klores, who was an attorney, died on February 18, 1979. Petitioner's representative failed to present any proof to substantiate the cost basis of the real property involved herein.

CONCLUSIONS OF LAW

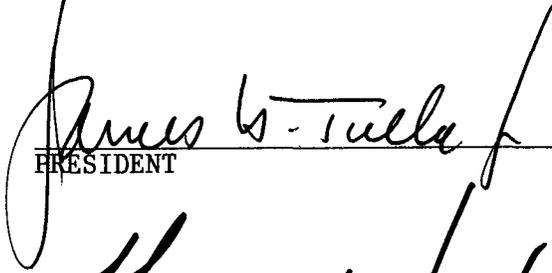
A. That petitioners Benjamin C. Klores and Anna Klores failed to sustain their burden of proof imposed under section 689(e) of the Tax Law in establishing a cost basis for the real property.

B. That the petition of Benjamin C. Klores (now deceased) and Anna Klores, individually and as Executrix of the Estate of Benjamin C. Klores, is denied and the Notice of Deficiency issued on June 27, 1977 is sustained.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER