

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

RONALD A. HOPKINS

DECISION

for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1979 and 1980.

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Petitioner, Ronald A. Hopkins, P.O. Box 97, Yorkshire, New York 14173,  
filed a petition for redetermination of a deficiency or for refund of personal  
income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File  
No. 43791).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the  
offices of the State Tax Commission, Part V, State Office Building, 65 Court  
Street, Buffalo, New York on September 11, 1985 at 2:45 P.M. Petitioner  
appeared by Allan P. McCarty, Esq. The Audit Division appeared by John P.  
Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

#### ISSUE

Whether the loss sustained by petitioner was a personal loss and therefore  
not deductible under section 165 of the Internal Revenue Code.

#### FINDINGS OF FACT

1. Petitioner, Ronald A. Hopkins, filed New York State Resident Income  
Tax returns for 1979 and 1980 on which he deducted a \$3,000.00 capital loss for  
1979 and a \$3,000.00 capital loss carryover for 1980, Petitioner's Federal  
Schedule D for 1979 described the loss property as "Home-Nunda, NY" and stated  
that it was acquired in 1975 and sold in 1979. The selling price was shown as

2. In a Statement of Audit Changes dated December 15, 1982, petitioner was informed by the Audit Division that the capital loss and the capital loss carryover were disallowed on the basis that "you failed to establish that the loss on the sale of your house was a deductible loss" (the Statement of Audit Changes also reduced allowable medical and dental expenses by \$90.00 for 1979, however, that disallowance is not at issue).

3. On February 25, 1983, the Audit Division issued a Notice of Deficiency to petitioner for \$520.26 in additional tax for the years 1979 and 1980, plus interest.

4. The loss property was a house and three acres of land located in Nunda, New York. The site was in a desirable recreational area near ski facilities and hunting and fishing areas. It was about a one hour drive from Rochester and a two hour drive from Buffalo. There was a stream on the property. The house was of contemporary design with picture windows and a large deck. It had central heating.

5. In 1979 petitioner owned two business: R. A. Hopkins, Inc., of Nunda, New York, and DeMuth Marzolf, Inc. of Darien Center, New York, about sixty miles northwest of Nunda. Both firms were fuel oil and gasoline distributorships

6. Because of business reversals, petitioner found himself in financial difficulties in 1979. He had guaranteed certain corporate obligations and was required to deed the Nunda land and house to Citizens Central Bank of Arcade, New York in order to satisfy his own liability. This transaction resulted in the loss of \$16,731.45.

7. Petitioner claims that he purchased the Nunda land with the intention of developing it with three vacation homes which were to be sold or rented, and

that the loss sustained was a business loss. The one house on the land **was** about 90 percent complete when the property was deeded to Citizens Central Bank.

8. During 1979, petitioner resided, as he does now, in Yorkshire, New York, about thirty miles west of Nunda. He was able to retain his Yorkshire home despite his financial problems,

9. Petitioner does not ski, fish or hunt.

CONCLUSIONS OF LAW

A. That Section 165 of the Internal Revenue Code, as in effect during the years at issue, provided, in pertinent part:

"Sec. 165 (a) GENERAL RULE. -- There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

\* \* \*

(c) LIMITATION **ON** LOSSES OF INDIVIDUALS. -- In the case of an individual, the deduction under subsection (a) shall be limited to --

- (1) losses incurred in a trade or business;
- (2) losses incurred in any transaction entered into for profit, though not connected with a trade or business;  
and
- (3) losses of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft...."

B. That petitioner did not sustain his burden of proof imposed under section 689(e) **of** the Tax Law to show that the loss incurred on the deeding of the Nunda real estate was a loss incurred in a trade or business or a loss incurred in a transaction entered into for profit (no casualty or theft loss was claimed). Accordingly, no deduction is allowable.


C. That the petition of Ronald A. Hopkins is denied and the Notice of Deficiency issued on February 25, 1983 is sustained.

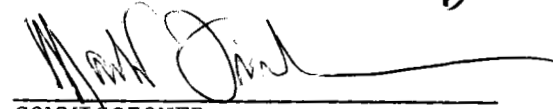
DATED: Albany, New York

JUN 19 1986

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER