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MEMORANDUM

Income Tax Determinations
A-2
Rosenzweig, Irwin

TO: Commissioners Murphy, Palestin and Macduff
FROM: Vincent P. Molineaux, Hearing Officer
SUBJECT: IRWIN ROSENZWEIG, Application for Revision or Refund of an Assessment of Personal Income Taxes for the Year 1954

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York, on September 30, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

Federal changes disallowed a claimed bad debt loss of \$8,342.07 on the ground that the loss was a capital investment.

Taxpayer was 25 per cent stockholder in a corporation engaged in building homes. All of the stockholders placed additional funds at the disposal of the corporation on a pro rata basis to avoid greater losses. The claim that notes were exchanged was not substantiated. Part of the funds were paid back, also on a pro rata basis leaving the amount of the loss as claimed.

This would appear to be clearly a loss of invested capital and I recommend that the determination of the State Tax Commission be substantially in the form submitted herewith.

/s/

V. P. MOLINEAUX
Hearing Officer

VPM:rlp
Enclosure
April 5, 1965 (Feb. 14, 1966)

/s/

M. SCHAPIRO
Approved

/s/

E. H. BEST
Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF
IRWIN ROSENZWEIG (Deceased)
FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 18 OF THE TAX LAW FOR
THE YEAR 1954

Irwin Rosenzweig, the taxpayer herein, having filed timely applications for revision or refund of personal income taxes under Article 18 of the Tax Law for the year 1954 and a hearing having been held in connection therewith at the office of the State Tax Commission, 88 Centre Street, New York, N. Y. on September 30, 1954 before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Philip S. Beispfel, Esq., and the record having been duly examined and considered,

The State Tax Commission hereby finds:

- (1) That the taxpayer filed a resident personal income tax return for the year 1954 on which the tax shown to be due was paid.
- (2) That assessment No. BYF-198787 was issued July 18, 1957 based upon disallowance of a claim for a bad debt.
- (3) That a Federal assessment was issued against the taxpayer for the year 1954 based upon disallowance of the same sum as a capital loss and that such Federal assessment has been paid, and no changes were made.
- (4) That the loss of \$8,342.07 claimed on taxpayer's State return as a bad debt deduction was changed on audit by the State Tax Commission to a capital loss and provided the basis for the assessment in question as taxpayer had no capital gains

against which the capital loss could be set off.

(5) That taxpayer was the holder of 25 per cent of the shares of Peter Morris Homes, Inc. for which taxpayer paid \$3,500; that to prevent the bankruptcy of the corporation and reduce losses, all of the stockholders put additional money into the corporation on a pro rata basis which it is now claimed were loans to the corporation secured by notes.

(6) That although the representative stated that the notes are "made part of the record and . . . attached hereto" (minutes of hearing transcript, page 7), the representative failed to produce any, stating that he was unable to produce copies or originals of such notes (minutes of hearing transcript, page 11).

Based upon the foregoing findings and the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the loss claimed by taxpayer is a capital loss on advances of capital and not a bad debt loss on loans as claimed by the taxpayer.

(B) That the tax assessed under Article 15 of the Tax Law for the year 1954 is correct and legally collected and the denial of the application for revision or refund is affirmed.

DATED: Albany, New York, this 23rd day of February , 1956 .

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

/s/

JAMES R. MACDUFF
Commissioner