

POOR  
QUALITY  
THE FOLLOWING  
DOCUMENT (S)  
ARE  
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations*  
*A-Z*  
*Falino, Nicholas and*  
*Phyllis*

TO: Commissioners Murphy, Macduff & Conlon

FROM: Solomon Sies, Hearing Officer

SUBJECT: NICHOLAS AND PHYLLIS FALINO

Petition for Redetermination of a Deficiency  
or for Refund of Personal Income Taxes under  
Article 22 of the Tax Law for the year 1960.

A notice of hearing was mailed to the taxpayers on October 18, 1966, scheduling a hearing in this matter at the New York City Office for November 9, 1966. The taxpayers defaulted in appearance.

The issue involved is whether the taxpayer, Phyllis Falino, is entitled to deduct from capital gains an alleged worthless non-business bad debt.

The taxpayers, husband and wife, filed a joint Federal return for 1960 but elected to file separate New York State returns (Form IT 208). On their Federal return, the taxpayers reported on Schedule D long term capital gains of \$99,175.70 and deducted therefrom a worthless non-business bad debt in the amount of \$83,271.75 or a taxable net capital gain in the amount of \$7,951.97. On their separate New York State returns, the taxpayers did not enter thereon the gains and losses as though separate Federal returns had been filed by them.

It appears that the wife was a 50% shareholder of capital stock of Andrea Sales Corporation, a domestic corporation organized under the laws of the State of New York, which was dissolved on March 17, 1960. As a result of information received from the Corporation Tax Bureau, the Income Tax Bureau ascertained that the gain realized by the wife upon the dissolution of the aforementioned corporation had been understated (\$106,000 instead of \$99,000, as reported). Rogers & Haggerty Corp., a domestic corporation, was organized under the laws of the State of New York in 1955 engaged in the business of building and construction. This corporation was awarded a contract to build a dormitory for the State Teachers College in New Paltz, N. Y. It is claimed that between 1957 and 1960, the taxpayer, Phyllis Falino, made loans to the aforementioned corporation in the amount of \$83,271.75; that Nicholas Falino was sole stockholder of said corporation; that, although the construction was completed, the corporation's affairs were wound up in 1960 with no assets, and liabilities in excess

TO: Commissioners Murphy, Macduff & Conlon

Page 2

RE: NICHOLAS AND PHYLLIS FALINO

of \$200,000. The taxpayers failed to submit detailed information in substantiation of their claim that the alleged worthless non-business bad debt was attributable to the wife. The Income Tax Bureau issued a statement of audit changes holding that the gain realized by the wife had been understated; that the non-business bad debt was applicable to the husband and not the wife; that such loss could not be applied against the capital gains reportable on the separate New York State return filed by the wife; that \$1,000 of such loss was allowable against the ordinary income of the husband. Accordingly, a notice of deficiency was issued imposing additional tax together with interest in the amount of \$4,681.89. The taxpayers are not contesting the statement of audit changes and notice of deficiency with respect to the adjustment of the gain realized on the liquidation of Andrea Sales Corporation. There was no Federal audit of taxpayers' return for 1960.

If a non-business bad debt becomes entirely worthless within the taxable year, the loss is treated like a loss from a sale or exchange, during the taxable year, of a capital asset, held for not more than six months. In other words, there is a short-term capital loss. (Fed. Reg. 1.166-8).

The excess of capital losses over capital gains are deductible to the extent of the smaller of the following: (1) \$1,000; (2) taxable income plus exemptions (without loss). Source: Fed. Reg. 1.1211-1.

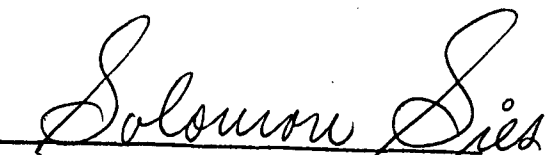
Section 612 (f) of the Tax Law provides that if husband and wife file a joint Federal return but elect to file their New York income taxes separately, they shall "determine their New York adjusted gross income separately as if their Federal adjusted gross income had been determined separately."

I am of the opinion that the taxpayers have failed to establish that the alleged worthless non-business bad debt was attributable to Phyllis Falino.

For the reasons stated above, I recommend that the decision of the Tax Commission in this matter be substantially in the form submitted herewith.

JUL 19 1967 OK ms SK

7 23-87

  
Hearing Officer

**STATE OF NEW YORK  
STATE TAX COMMISSION**

-----

**IN THE MATTER OF THE PETITION**

**OF**

**NICHOLAS & PHYLLIS FALINO**

**FOR REDETERMINATION OF A DEFICIENCY OR  
FOR REFUND OF PERSONAL INCOME TAXES  
UNDER ARTICLE 22 OF THE TAX LAW  
FOR THE YEAR 1960.**

-----

The above named taxpayers having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1960 and a notice of hearing in connection therewith having been mailed to the taxpayers on October 18, 1966 scheduling a hearing to be held at the office of the State Tax Commission at 80 Centre Street, New York, N. Y., on the 9th day of November, 1966, at 2:00 P.M., before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, and the taxpayers having defaulted in appearance thereat and the matter having been duly examined and considered,

**The State Tax Commission hereby finds:**

(1) That the taxpayers, Nicholas Falino and Phyllis Falino, his wife, filed a joint Federal income tax return for 1960 in which they reported on Schedule D thereof a non-business worthless bad debt in the amount of \$83,371.75 and long term capital gains of \$99,000 from Andrea Sales Corp. and \$173.70 from Mutual Investment Fund for a net long term capital gain of \$99,173.70; that the taxpayers deducted the worthless non-business bad debt from the total capital gains and reported a taxable net capital gain in the amount of \$7,951.97; that the taxpayers elected to and did file separate

New York State income tax returns on Form IT 208 for the year 1960 but did not enter on the separate returns the gains and losses as though separate Federal returns had been filed by them; that on the New York State returns, the taxpayer, Nicholas Falino, reported Federal adjusted gross income in the amount of \$13,247 and New York taxable income in the amount of \$8,050.93; that the taxpayer, Phyllis Falino, reported Federal adjusted gross income in the amount of \$9,988.13 and New York taxable income in the amount of \$8,788.13.

(2) That on April 13, 1964, the Department of Taxation and Finance mailed to the taxpayers a statement of audit changes for the year 1960 holding that the gain realized upon the liquidation of Andrea Sales Corp. by the taxpayer, Phyllis Falino, was understated; that the total distribution from said corporation amounted to \$214,000; that the aforementioned taxpayer's 50% share thereof amounted to \$107,000; that her cost basis as reported amounted to \$1,000 and that the corrected gain realized upon the liquidation of the aforementioned corporation amounted to \$106,000 of which 50%, or \$53,007.85, was includable in taxable income; that it was further held that the non-business bad debt of \$83,271.75 was applicable to the taxpayer, Nicholas Falino; that \$1,000 of such loss was allowable against the ordinary income of said taxpayer, Nicholas Falino; that the loss claimed could not be applied against capital gains reportable on the separate New York State return filed by the taxpayer, Phyllis Falino; that, accordingly, the income tax liability of the taxpayers was adjusted and a notice of deficiency issued on April 13, 1964 imposing additional tax together with interest in the amount of \$4,681.89; that the taxpayers are not contesting the statement of audit changes and notice of deficiency with respect to the adjustment of the gain

realized upon the liquidation of Andrea Sales Corp. but contend that the non-business worthless bad debt is applicable to the taxpayer Phyllis Falino, and was properly deductible from the capital gains reported by her.

(3) That the taxpayers contend that Reger Haggerty Inc., a domestic corporation, was organized under the laws of the State of New York in 1955 engaged in the business of building and construction; that the aforementioned corporation was awarded a contract to build a dormitory for the State Teachers College in New Paltz, New York; that between 1957 and 1960, the taxpayer, Phyllis Falino, made loans to the aforementioned corporation of which her husband, Nicholas Falino, was the sole stockholder; that the total loans amounted to \$83,271.75; that although the construction job was completed, the corporation's affairs were wound up in 1960 with no assets, and liabilities in excess of \$200,000; that as a result thereof, it is claimed that the taxpayer, Phyllis Falino, sustained a worthless non-business bad debt in 1960 in the amount of \$83,271.75.

(4) That the taxpayers have failed to submit any evidence either in the form of checks, notes, acknowledgments, records or any other documentary evidence to substantiate the claim that the alleged loans were attributable and applicable to the taxpayer, Phyllis Falino.

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

**DECIDES:**

(A) That the taxpayer, Phyllis Falino, has failed to establish that she was entitled to a deduction of the non-business worthless bad debt, as more fully set forth in Finding (3) above;

that the alleged loss was not deductible from capital gains on the separate New York State return filed by the taxpayer, Phyllis Falino, in accordance with the provisions of Section 612 (f) of the Tax Law.

(B) That, accordingly, the statement of audit changes and notice of deficiency are correct; that the same do not include any tax or other charge which could not have been lawfully demanded; that the petition of the taxpayers for a redetermination of a deficiency or for refund of personal income taxes for the year 1960 filed with respect thereto be and the same is hereby denied.

Dated, Albany, N. Y. the 22nd day of Sept. , 1967.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**President**

/s/

JAMES R. MACDUFF  
**Commissioner**

/s/

WALTER MACLYN CONLON  
**Commissioner**