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MEMORANDUM

Income Tax Determinations
Pustilnik, Jerome M. A-2

TO: Commissioners Murphy, Macduff and Conlon
FROM: Vincent P. Molineaux, Hearing Officer
SUBJECT: JEROME M. PUSTILNIK

Petition for redetermination of a deficiency and
for refund of personal income tax under Article 22
of the Tax Law for the year 1962

A hearing on the above matter was held before me
March 1, 1967.

The question involved is whether the loss of \$74,275
loaned to the brokerage firm by whom the taxpayer was employed
on a commission basis was a proper deduction as a business loss.

Taxpayer was responsible for an underwriting of a public
offering of Trygon Electronics Corporation which he had been
negotiating for some time. He took employment with the firm of
William, David and Motti, Inc. as part of the arrangement for the
offering and underwriting to be undertaken by that firm. Due to
the instability of the securities market in early 1962, there was
a question as to whether William, David and Motti, Inc. would be
able to complete the underwriting and taxpayer advanced to the
firm a total of \$74,275 in three separate amounts on March 30 and
April 5, 1962. The underwriting was successfully completed in
April of 1962, but the firm of William, David and Motti, Inc.
went into bankruptcy in the same year and taxpayer's loans were
not paid and there is no possibility of payment.

Taxpayer testified that the Federal income tax return
filed by him for the same year claimed a business loss for the
same amount and a refund of \$14,046 was paid. However, the
return was filed at the same time as the State return, that is,
February 1963 and the time for audit will not expire until
February 1968.

Since the test as to whether the loss claimed is a proper
business loss depends upon the interpretation of Section 166 of
the Internal Revenue Code the case of Trent v. Commissioner of
Internal Revenue, 291 F 2d 669, 1961, 7 AFTR 2d 1599 would appear
to be controlling. In that case, Trent, a corporate employee
and not an officer or stockholder, was required to make loans
to a corporation to hold his job and when, after making several
loans he refused to make any additional ones he lost his position

and was unable to recover the money already advanced. The Court held that the loans were made in connection with the taxpayer's "trade or business of rendering services for pay" citing Folker v. Johnson, 230 F 2d 906 (49 AFTR 375), and was a proper deduction as a business loss.

For the reasons stated above, I recommend that the decision of the Commission in the above matter granting a redetermination of deficiency and allowing the refund of \$6,017.32 with interest be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX

~~Heating Officer~~

VPM:ken

Enc. 4-5-67

April 3, 1967

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

JEROME M. PUSTILNIK

**FOR A REDETERMINATION OF A DEFICIENCY AND
FOR REFUND OF PERSONAL INCOME TAX UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1962**

Jerome M. Pustilnik having filed a petition for a redetermination of a deficiency and for refund of personal income tax under Article 22 of the Tax Law for the year 1962 and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York on the first day of March, 1967 before Vincent P. Molinoux, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Jerome M. Pustilnik, filed a New York resident income tax return for the year 1962 on February 24, 1963 requesting thereon a refund of \$6,017.32. The return showed total income from the Federal return as \$19,502. The withholding statements annexed to the return disclosed total income from wages as \$89,600. A schedule annexed to the return claimed a deduction for a business bad debt of \$74,275.

(2) The deduction was disallowed as a business bad debt deduction and a statement of audit changes was issued March 28, 1966 only allowing \$1,000 thereof as a non-business bad debt deduction. The claim for refund of \$6,107 was denied and notice of deficiency in the amount of \$262.15 over and above the claimed refund was issued March 28, 1966.

(3) The withholding statements filed by the taxpayer disclose income for 1962 from wages paid by William, David and

Motti, Inc., \$3,600 and income from wages paid by Spingarn, Heine and Co., \$86,000.

(4) The deduction claimed as a business loss is the sum of \$74,273 loaned to William, David and Motti, Inc., in order to enable them to underwrite an offering which taxpayer had been instrumental in bringing to the firm.

(5) The underwriting was successfully completed in April of 1962 but the firm went into bankruptcy in the same year, and the taxpayer's loans were not repaid and there is no possibility of repayment.

(6) That the money was loaned upon the expectation that William, David and Motti, Inc. would be able to conduct a successful offering on which the taxpayer would earn substantial commissions and be placed in a position to conduct further offerings and enhance his earnings and his reputation as a financial counsellor.

Based upon the foregoing, the State Tax Commission hereby,
DECIDES:

(A) That the statements of audit charges adjusting the taxpayer's New York State personal income for the year 1962 is incorrect and that the petition for redetermination is granted.

(B) That the notice of deficiency for such year is hereby cancelled and revoked and the application for refund in the amount of \$6,017.32 with lawful interest is hereby granted.

DATED: Albany, New York this 12th day of April, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

~~COMMISSIONER~~

~~COMMISSIONER~~

/s/

WALTER MACLYN CONLON

~~COMMISSIONER~~