

STATE OF NEW YORK
STATE TAX COMMISSION

Churchill, Clinton
Personal
22

1971

In the Matter of the Petition

of

Clinton H. & Frances G.
Churchill

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1961 & 1962 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of January , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Clinton H. & Frances G. Churchill (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Chas. W. Mayo & C.F. Schaffstall
c/o Ernst & Ernst
1900 Rand Bldg.
Buffalo, New York 14203
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

11th day of January , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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1420 Main Street
Buffalo, New York 14209

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Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

CLINTON H. & FRANCES G.
CHURCHILL

DECISION

for a Redetermination of a Deficiency
or for Refund of Personal Income Taxes
under Article 22 of the Tax Law for
the Years 1961 and 1962

Taxpayers petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law. A formal hearing was held before Vincent P. Molineaux, Hearing Officer, at the offices of the State Tax Commission in the City of Buffalo, New York, on August 3, 1966. The taxpayers were represented by Charles W. Mayo and Charles F. Schaffstall, Esqs., of counsel.

FINDINGS OF FACT

1. Taxpayer and his wife filed joint New York State resident income tax returns for the years 1961 and 1962.

2. On November 22, 1965 the Department of Taxation and Finance issued notice of deficiency file number 2-3349910 disallowing a capital loss refund erroneously paid to the taxpayer on refund voucher # 5820118 dated May 14, 1964 totalling \$117.78.

3. Taxpayers reported a capital gain in the amount of \$4,908,152.40 on their personal income tax returns for 1961 resulting from the sale of capital stock in WKBW Inc., and WKBW-TV, Inc. By terms of the sales contract taxpayers were subsequently obliged to repay part of the purchase price amounting to \$17,949.59. Taxpayer therefore filed an amended New York State return for 1961 under "Claim of Right" Section 1341 (a) 5 (b) of the Internal Revenue Code for \$897.48. The Income Tax Bureau formally disallowed

the refund claim on April 27, 1964, informing the taxpayer that unlike the Federal Code, the New York State Tax Law contained no claim of right provision.

4. The return of \$17,949.59 of the original purchase price by the taxpayer was a capital loss reportable in 1962 the year it was returned. However, deduction was limited to reported Federal net income for the year 1962. Taxpayer reported a net loss on his 1962 Federal Income Tax Return.

5. On audit of taxpayer's 1962 return, a refund of \$108.47 was granted by the Bureau. The Bureau had allowed the capital loss item, subject to the limitation of deduction to the extent of aggregate gains plus \$1,000.00. The Income Tax Bureau sought to recover this refund when it was later discovered that the taxpayer's Federal net income was a negative amount.

DECISION

A. Taxpayer is not entitled to a deduction in 1961 for a refund of purchase price in 1962 of \$17,949.59 since New York State does not have a provision similar to the Internal Revenue Code "Claim of Right" Section 1341(A)d(b).

B. Taxpayer is not entitled to a deduction in 1962 for \$1,000.00 capital loss since Federal Net Income was reported in a negative amount.

C. The petition is denied and the assessment is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

December 31, 1970

Lipman Kellman

COMMISSIONER

COMMISSIONER

Milton Korman

COMMISSIONER

AD 32 (9-70) 50M

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12226

RETURNED TO SENDER

By Buffalo, N.Y.P.O.

ELLCOTT STATION

Undeliverable as Addressed

Do Not Post Again in this

Envelope or Wrapper

CERTIFIED

No 237783

MAIL

JAN 14 1971



Chas. W. Mayo & C.F. Schaffstall
c/o Ernst & Ernst
1900 Rand Bldg.
Buffalo, New York 14203

*Moved -
Not Forwardable
376B*

Handwritten initials and a checkmark.



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

*Churchill, Clinton H. &
Frances G.
Personal Income
Art. 22*
STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

January 11, 1971

Clinton H. & Frances G. Churchill
1420 Main Street
Buffalo, New York 14209

Please take notice of the **Decision** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **Section 690**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of :

CLINTON H. & FRANCES G.
CHURCHILL :

DECISION

for a Redetermination of a Deficiency :
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under Article 22 of the Tax Law for :
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DECISION

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December 31, 1970

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COMMISSIONER

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