

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH T. CLARK and MARION H. CLARK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(§)~~ 22 of the
Tax Law for the Year ~~(§) OF PARADOX~~ 1966.:

State of New York
County of Albany

Catherine Steele, 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 10th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Joseph T. Clark and Marion H. Clark (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Joseph T. Clark
15 St. Anns Road
Poughkeepsie, New York 12601 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~) (~~the~~) 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
10th day of September, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 10, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Joseph T. Clark
15 St. Anns Road
Poughkeepsie, New York 12601

Dear Mr. & Mrs. Clark:

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

Please take further notice that pursuant to
Section ~~601~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

[Signature]
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

~~cc: Tax Bureau's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOSEPH T. CLARK and MARION H. CLARK
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1966.

DECISION

Petitioners, Joseph T. Clark and Marion H. Clark, 15 St. Anns Road, Poughkeepsie, New York 12601, filed a petition under section 629 of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1966. (File No. 01049).

Said deficiency was asserted by notice issued August 26, 1968 and is in the amount of \$967.69 plus interest of \$17.27 for a total of \$984.96 and less an overpayment on the return of \$756.52 for a net amount due of \$228.44.

A hearing was duly held on March 8, 1976, at 3:00 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners appeared without a representative. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of counsel).

The record of said hearing has been duly examined and considered.

ISSUE

Whether a certain loss incurred in 1964 in an investment transaction is deductible in 1966 as a theft loss is the issue in this case.

FINDINGS OF FACT

1. Joseph T. Clark, prior to 1966, was a management employee of IBM and lived in Poughkeepsie. In 1966 he was transferred to Chicago, Illinois. He now concedes that on November 28, 1966, he changed his domicile to Illinois. At some time in 1970, he moved back to Poughkeepsie. He has retired from IBM.

2. From about the mid-1950's, Mr. and Mrs. Clark had owned and operated small apartment houses in and around the City of Poughkeepsie.

3. In late 1963 or early 1964, Mr. Clark met Mr. Richard Gayle and Mr. Robert Ganter, both of whom had come to Poughkeepsie from Reading, Pennsylvania. Gayle and Ganter were partners in the real estate partnership of R. L. Gayle Associates. Its primary business was building and selling single family dwellings.

4. Mr. Clark, together with a Mr. Houlihan, agreed to go into business with Gayle and Ganter. This was to be a general real estate and building business, including subdivisions and raw acreage. A corporation was proposed to be known as Galihan, Inc. and Mr. Clark was to be Secretary.

5. On July 22, 1964, Mr. Clark tendered a check for \$10,000.00 to Robert Ganter, payable to Galihan, Inc. Mr. Clark received stock certificates in return for the check. Mr. Ganter, however, deposited the check in the account of R. L. Gayle Associates and used it to pay debts of that firm and not for the business of Galihan, Inc. Apparently at no time did Galihan, Inc. have any assets. The misappropriation of the check came to Mr. Clark's attention in August, 1964. After that Mr. Clark first learned of the bad financial status of R. L. Gayle Associates.

6. In January, 1965, Mr. Ganter offered to Mr. Clark that Mr. Clark take over on his own behalf one of the projects of R. L. Gayle Associates. This was the "McMorris job" involving real estate in Peekskill. In March, 1965, Mr. Clark determined that at no time did Gayle Associates have any equity interest in the McMorris property and that nothing could be realized therefrom.

7. In April, 1965, a criminal information alleging obtaining money by false pretenses was filed with the Grand Jury in Dutchess County against Gayle and Ganter. In November, 1965, in a separate civil suit against Gayle and Ganter, the defendants paid Mr. Clark \$1,000.00 cash and confessed judgment in the amount of \$9,000.00. This suit was brought by Mr. Clark individually.

8. Mr. Clark made efforts to collect on the \$9,000.00 note. He retained an attorney and in July, 1966 made investigations in and around Reading, Pennsylvania, where Gayle and Ganter currently resided. In November, 1966, he decided that no recovery could be made on the note.

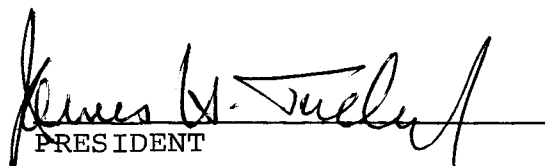
CONCLUSIONS OF LAW

A. That in 1966, Mr. Clark abandoned his claim for reimbursement from Gayle and Ganter for the theft of his property, and so is entitled to a deduction for the loss in question. (See U.S. Treasury Reg. 1.165 - 1(d)(2)(i)).

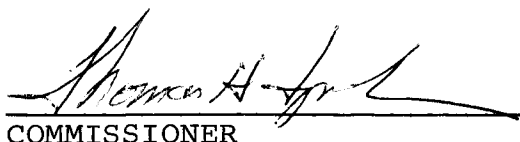
B. That the deficiency under review is erroneous in part and is recomputed to be \$271.54. Said deficiency shall be offset against tax withheld of \$783.33, resulting in a refund due petitioners, Joseph T. Clark and Marion H. Clark, of \$511.79.

DATED: Albany, New York
September 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER