

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY COOPER & GERTRUDE COOPER

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)) 1964.

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

State of New York
County of Albany

Margaret A. Groelz, 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 29th day of April, 1976, she served the within Notice of Decision (~~or Determination~~) by (certified) mail upon Harry and Gertrude Cooper (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr and Mrs. Harry Cooper
1594 Lakeview Drive
Hewlett, New York
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

29th day of April, 1976.

Margaret A Groelz

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
HARRY COOPER & GERTRUDE COOPER :
For a Redetermination of a Deficiency or :
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Taxes under Article(§) 22 of the :
Tax Law for the (Year(s) 1964. :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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State of New York
County of Albany

Margaret A. Groelz , 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 29th day of April , 1976, she served the within Notice of Decision (~~or Determination~~) by (certified) mail upon Marvin Freeman C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Marvin Freeman, C.P.A.
350 Fifth Avenue
New York, New York 10001

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

29th day of April , 1976

Janet Mack

Margaret A. Groelz



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

PAUL GREENBERG
SECRETARY TO
COMMISSION

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

DATED: Albany, New York
April 29, 1976

(518) 457-3850

Mr. and Mrs. Harry Cooper
1594 Lakeview Drive
Hewlett, New York

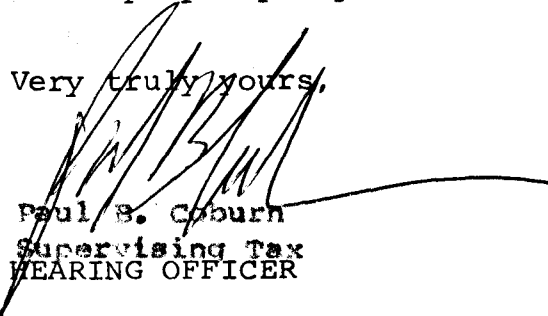
Dear Mr. and Mrs. Cooper:

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

Please take further notice that pursuant to
Section(s) 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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions
of
HARRY COOPER and GERTRUDE COOPER
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1964.

DECISION

Petitioners, Harry Cooper and Gertrude Cooper, 1594 Lakeview Drive, Hewlett, New York, have filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1964 (File No. 28401523). A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1976. Petitioners appeared by Marvin Freeman, C.P.A. The Income Tax Bureau appeared by Peter J. Crotty, Jr., Esq. (Richard Kaufman, Esq. and Alexander Weiss, Esq. of counsel).

ISSUE

Was the loss sustained by petitioners, Harry Cooper and Gertrude Cooper, during the year 1964 in connection with the foreclosure of land owned by them in Texas an ordinary loss or a long term capital loss?

FINDINGS OF FACT

1. Petitioners, Harry and Gertrude Cooper, are New York State residents. In 1964 they timely filed a New York State personal income tax resident return.

2. On November 27, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Harry Cooper. It accordingly issued a Notice of Deficiency against him in the sum of \$529.88. The Income Tax Bureau, on November 27, 1967, also issued a Statement of Audit Changes against petitioner, Gertrude Cooper. It accordingly issued a Notice of Deficiency against her in the sum of \$134.27.

3. In 1961, the petitioners, Harry and Gertrude Cooper, bought 4,000 acres of vacant land in El Paso, Texas, for investment purposes. The purchase price was \$150,000. \$20,000 was to be paid on signing the contract and \$6,500 was to be paid in annual installments with 6% interest per year on the unpaid balance. The mortgage on the property was held by the previous owner of the land. Petitioners paid the down payment and two of the annual installments.

4. In 1964, petitioners, Harry Cooper and Gertrude Cooper, failed to make their mortgage payment and stopped paying the real estate taxes on the land. Subsequently, the mortgage was

foreclosed and a trustee's sale was held at which time the property was sold. They sustained a loss of \$34,217.50 as a result of the transaction.

CONCLUSIONS OF LAW

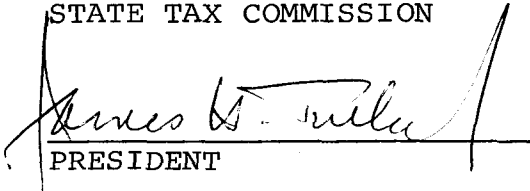
A. That the acts by petitioners, Harry Cooper and Gertrude Cooper, in not paying their real estate taxes or mortgage payments did not constitute an abandonment. The property continued to have value as evidenced by the foreclosure sale. Commissioner v. Green, 126 F. 2d 70 (3rd Cir. 1942).

B. That the foreclosure of the mortgage constituted a sale. The loss resulting from the sale was a long term capital loss. Helvering v. Hammel, 311 U.S. 504 (1940).

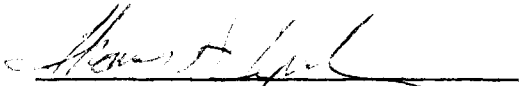
C. That the notices of deficiency issued against petitioners, Harry and Gertrude Cooper, are sustained and their petitions are denied.

DATED: Albany, New York
April 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER