

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN O. and LYDIA E. YOUNG

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

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) 1970 and  
1971.

State of New York  
County of Albany

Donna Scranton, 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 14th day of May, 1976, she served the within Notice of Decision (~~or Determination~~) by (certified) mail upon John O. and Lydia E. Young (~~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. John O. Young  
Route 8  
Speculator, 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~~) (~~or~~) 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

14th day of May, 1976

Janet Mack

Donna Scranton





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, N.Y.  
May 14, 1976

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

Mr. and Mrs. John O. Young  
Route 8  
Speculator, New York

Dear Mr. and Mrs. Young:

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

Please take further notice that pursuant to  
Section(§) 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,

**PAUL B. COBURN**  
SUPERVISING TAX  
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOHN O. and LYDIA E. YOUNG :  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Taxes under :  
Article 22 of the Tax Law for the Years :  
1970 and 1971. :  
:

DECISION

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Petitioners, John O. and Lydia E. Young, Route 8, Speculator, New York, petitioned for a redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law for the years 1970 and 1971.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on February 26, 1975, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by Lawrence Sovik, Esq. and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq. of counsel).

ISSUE

Did the taxpayers sustain losses in 1970 and were they operating business losses which could be carried over?

FINDINGS OF FACT

1. Petitioners, John O. and Lydia E. Young, timely filed New York State income tax returns for the years 1970 and 1971.

2. A Notice of Determination of deficiencies in personal income taxes for the years 1970 and 1971 was issued on July 30, 1973, against the taxpayers under File No. 0-54833688. The total amount of deficiency in income tax in the Notice of Deficiency was:

1970 - \$23,283.52

1971 - \$ 1,066.57

3. The taxpayers petitioned for redetermination of the deficiencies.

4. On May 21, 1970, John O. Young was the owner of 59 shares of the capital stock of Farmers & Traders Life Insurance Company which stock was then held by the Metropolitan National Bank of Syracuse as collateral for loans made by said bank to Lignacraft, Inc., upon which there was then due \$223,729.00. Said stock was also subject to a contingency fee retainer of the law firm of Smith, Sovik, Kendrick, McAuliffe & Schwarzer in litigation then pending between John O. Young and others with said insurance company.

John O. Young was a guarantor of said loans to said bank.

At the same time Lignacraft, Inc. was involved in Proceedings for Arrangement under Chapter XI of the Bankruptcy Act.

John O. Young at that time owned 66 2/3% of the capital stock of Lignacraft, Inc. and had been its president for many years.

For several years prior to 1970, Lignacraft, Inc. operated at a loss and as of November 30, 1970, had an accumulated operating deficit of \$730,439.00. At that time Lignacraft, Inc. had no assets of any consequence, namely accounts receivable of about \$30,000.00.

Lignacraft, Inc. filed a Plan of Arrangement wherein claims of creditors were exchanged for stock. The stock in 1970 had no value. Ultimately the plan was not consummated and later on March 21, 1973, Lignacraft, Inc. was adjudicated bankrupt. In conjunction with the foregoing, on May 22, 1970, John O. Young was forced to sell said 59 shares of stock in said insurance company and did sell the same to Lawrence Sovik for \$10,000 per share, resulting in a gain in 1970 of \$275,245.38.

5. In 1970 as part of the same transaction and arrangement John O. Young sustained the following losses:

Payment of note of Lignacraft, Inc. guaranteed by him, held by the Metropolitan Bank of Syracuse	\$223,729.00
Cash paid to Internal Revenue Service for taxes of Lignacraft, Inc. on 6/4/70	37,999.41

Cash paid to Venture Resources on loans of Lignacraft, Inc. 6/4/70	<u>17,000.59</u>
TOTAL LOSS - 1970	\$278,729.00

The taxpayers claimed a business loss of \$278,729.00 for the year 1970 on their return.

The Income Tax Bureau disallowed said loss on the grounds that said loss was not a business loss and also asserted that the loss was not deductible as a capital loss or non-business bad debt on the grounds of the "uncertainty of payment or redemption of the capital stock" of Lignacraft, Inc. which was held by John O. Young.

In their return for 1971, petitioners carried forward an unused portion of this loss as an operating business loss carryover in the sum of \$23,888.09 which the Commissioner has disallowed on the same grounds as aforesaid pertaining to the 1970 loss and assessed a deficiency of \$1,066.57 as of July 30, 1973, from which determination petitioners also appealed to the Tax Commission.

On June 4, 1970, the Metropolitan Bank of Syracuse required payment of its loan of \$223,729.00; the Internal Revenue Service required the payment of \$37,999.41; the Venture Resources required payment on loans of Lignacraft, Inc. of \$17,000.59 and these payments were required contemporaneously with the arrangement in the bankruptcy court.

6. On June 4, 1970, when John O. Young was required to pay the Metropolitan Bank of Syracuse, the Internal Revenue Service and Venture Resources on behalf of Lignacraft, we find on all the evidence of financial statements for five years, the arrears in taxes to the Federal and State governments and the huge deficits, that Lignacraft was by then hopelessly insolvent. John O. Young sustained losses of \$223,729.00 in 1970.

CONCLUSIONS OF LAW

A. In 1970, John O. Young did not sustain an operating business loss. However, in 1970 John O. Young sustained a long term capital gain of \$275,245.38 from the sale of Farmers and Traders Life Insurance Company and in 1970 at the same time, he sustained long term capital losses of \$278,729.00. There is accordingly no additional income tax due from John O. and Lydia E. Young for the year 1970.

B. The disallowance of a \$23,888.09 as a claimed net operating loss carry forward to 1971 is sustained. However, in 1971 John O. Young had a \$3,473.62 long term capital loss carryover from 1970 and he was entitled to deduct that long term capital loss against capital gains or ordinary income in accord with the statutory limitations on capital loss carryover.



C. The deficiency in income tax for 1971 shall be recomputed according to paragraph A. above and the deficiency in income tax as modified is sustained.

D. Pursuant to the Tax Law interest shall be due on the tax until paid.

DATED: Albany, New York  
May 14, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER