

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EMANUEL and MILDRED LEVENTHAL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(s)~~ 22 of the :  
Tax Law for the Year ~~(s)~~ ~~or~~ ~~Period~~ ~~(s)~~ 1972. :

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of March , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Emanuel & Mildred  
Leventhal ~~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. Emanuel Leventhal  
850 Claridge Drive  
Verona, New Jersey 07044

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

4th day of March , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EMANUEL and MILDRED LEVENTHAL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year ~~(s) or Period (s)~~ 1972.:  
\_\_\_\_\_

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of March , 1977, he served the within  
Notice of Decision by (certified) mail upon Martin L. Eisman

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Martin L. Eisman, CPA  
Eisman & Co., P.C.  
2001 Palmer Avenue  
Larchmont, New York 10538

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

4th day of March , 1977.

Bruce Batchelor

Janet Mack



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

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Emanuel Leventhal  
850 Claridge Drive  
Verona, New Jersey 07044

Dear Mr. & Mrs. Leventhal:

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

Please take further notice that pursuant to  
Section(8) **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,

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

Whether loans made to several corporations by petitioner, Emanuel Leventhal, an officer and employee are considered business or nonbusiness bad debts.

FINDINGS OF FACT

1. Petitioners, Emanuel and Mildred Leventhal, filed a New York State nonresident income tax return for the year 1972 on which a refund was claimed in the amount of \$160.00. On said return an ordinary loss of \$55,825.00 was claimed.

2. On April 11, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Emanuel and Mildred Leventhal, imposing additional tax on the grounds that a loan made by an officer and employee to the corporation employing him is considered a non-business bad debt and is treated as a short term capital loss. An adjustment was also made as to the allocation of wages and salary taxable to New York State. This was not contested by petitioners, Emanuel and Mildred Leventhal. In accordance with aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$1,400.31 and denied the refund claimed in the amount of \$160.00, after allowing for an overpayment on said return of \$160.00.

3. Petitioner, Emanuel Leventhal, was a 50% shareholder in three corporations from which he received substantial compensation over a period of years.

4. During the year 1969, petitioner, Emanuel Leventhal, in his capacity as employee-shareholder advanced monies to two of the three corporations in which he had a 50% interest. The monies advanced were in the form of subordinated loans or, in the alternative, guarantees of

loans provided by other parties. Petitioner, Emanuel Leventhal, maintains that this was done to allow the corporations to continue operating and to thus protect his annual salary income.

5. The deduction claimed by petitioners represents the sum of guarantee payments made during the year 1972 to those corporate creditors whose debts petitioner, Emanuel Leventhal, had personally guaranteed plus the loss of his own subordinated loans to the corporations. These payments were necessitated by the bankruptcy of said corporations in July, 1972.

6. Petitioner, Emanuel Leventhal, maintains that at the time he made and guaranteed loans of the corporations he was earning a salary between \$40,000 and \$50,000 per year plus fringe benefits and, that because of his age it would be difficult for him to secure employment elsewhere. Therefore, it was imperative that the corporations be kept solvent in order to protect his salary income.

#### CONCLUSIONS OF LAW

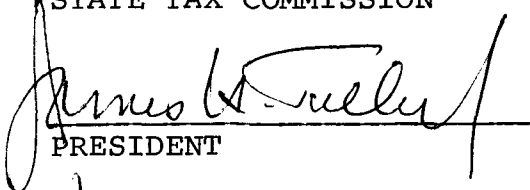
A. That the petitioners, Emanuel and Mildred Leventhal, have not sustained the burden of proof necessary to establish that the dominant motive for the advances was to protect his salary in accordance with regulation section 1.166-5(b) of the Internal Revenue Code.

B. That the advances are considered nonbusiness bad debts and, therefore, treated as a short term capital loss.


C. That the petition of Emanuel and Mildred Leventhal is denied and the Notice of Deficiency issued April 11, 1975 is sustained.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER