

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS D. AND JOANNE FERGUSON

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)~~
1970 and 1971.


State of New York
County of Albany

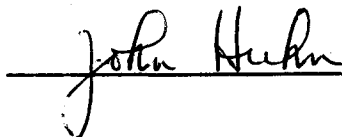
John Huhn, being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Thomas D. and Joanne
Ferguson (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Thomas D. Ferguson
115 Old Kings Highway South
Darien, Connecticut 06820

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~~
~~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
25th day of August, 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 25, 1978

**Mr. & Mrs. Thomas D. Ferguson
115 Old Kings Highway South
Darien, Connecticut 06820**

Dear Mr. & Mrs. Ferguson:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(x)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty
Hearing Examiner**

cc: ~~Plaintiff's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THOMAS D. AND JOANNE FERGUSON : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1970 and 1971. :

Petitioners, Thomas D. and Joanne Ferguson, 115 Old Kings Highway South, Darien, Connecticut 06820, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971 (File No. 01155).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1977 at 10:45 A.M. Petitioner Thomas D. Ferguson appeared pro se and for his wife, petitioner Joanne Ferguson. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners (nonresidents of New York State) are allowed to deduct as an ordinary loss on their nonresident income tax return, a loss generated by the sale of "section 1244 stock."

FINDINGS OF FACT

1. Petitioners, Thomas D. and Joanne Ferguson, nonresidents of New York State, filed New York State income tax nonresident returns for the years 1970 and 1971 on which they deducted \$20,500.00 and \$24,375.00, respectively, in arriving at adjusted gross income. The aforesaid amounts were losses sustained on the sale of stock which they claimed qualified as "section 1244 stock" under section 1244 of the Internal Revenue Code.

2. The Income Tax Bureau issued notices of deficiency against petitioners for the tax years 1970 and 1971 on September 25, 1972 and May 20, 1974, respectively. The notices were issued on the grounds that petitioners improperly deducted losses from the sale of stock in arriving at the New York adjusted gross income reported on their nonresident returns.

3. During the years 1970 and 1971, petitioners sold (at a loss) stock which they held in Type, Inc., a corporation with principal offices in Elmsford, New York.

4. Petitioners contended that the losses generated by the aforementioned stock sales should be treated as ordinary losses pursuant to section 1244 of the Internal Revenue Code.

CONCLUSIONS OF LAW

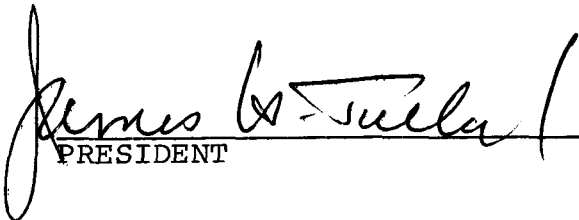
A. That the losses incurred by petitioners in 1970 and 1971 from the sales of stock in Type, Inc. (although treated as ordinary losses pursuant to section 1244 of the Internal Revenue Code) do


not constitute losses derived from New York sources or from the disposition of intangible personal property employed in a business, trade, profession, or occupation carried on in New York State, within the meaning and intent of sections 632(b)(2) and 632(b)(3) of the Tax Law and 20 NYCRR 131.5. Therefore, the losses cannot be considered in arriving at nonresident petitioners' New York adjusted gross income.

B. That the petition of Thomas D. and Joanne Ferguson is denied and the notices of deficiency issued September 25, 1972 and May 20, 1974 are sustained, together with such interest as may lawfully be due.

DATED: ALBANY, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER