



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP GILLMAN AND FREDERICA GILLMAN

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 ~~(x) 1967~~ ~~(x) 1968~~ 1968.:  
~~(x) 1967~~ ~~(x) 1968~~

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 6th day of February , 19 78, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Isidore Feldman, CPA

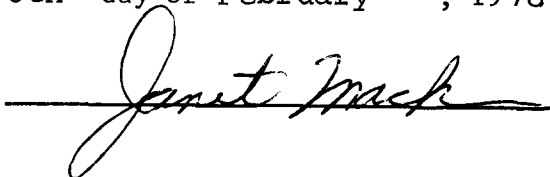
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Isidore Feldman, CPA  
1180 Avenue of the Americas  
New York, New York 10036

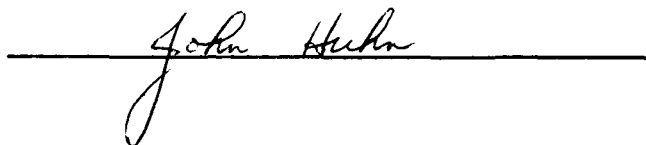
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

6th day of February , 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

**February 6, 1978**

**Mr. & Mrs. Philip Gillman  
208 North Street  
Manhasset Hills, New York 11040**

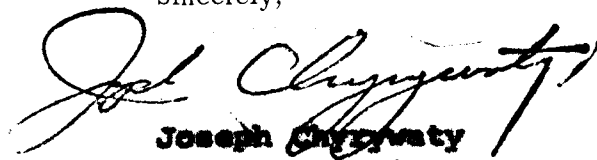
**Dear Mr. & Mrs. Gillman:**

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 **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 Chyzywaty  
Hearing Examiner**

cc: Petitioner's Representative  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 23, 1976 at 2:45 P.M. The petitioners appeared by Isidore Feldman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

## ISSUE

Whether a loss sustained in the amount of \$49,775.00 was deductible as an ordinary loss for the year 1968.

## FINDINGS OF FACT

1. Petitioners, Philip Gillman and Frederica Gillman, filed a New York State income tax resident return for the year 1968, on which two losses in the amounts of \$49,775.00 and \$11,067.00 were reported. The Income Tax Bureau issued a Notice of Deficiency

against the petitioners based on the disallowance of the two losses. Petitioners have conceded that the \$11,067.00 loss was properly disallowed by the Income Tax Bureau.

2. Petitioner Philip Gillman granted Spier Bros., Inc. several short term loans during the years 1966 and 1967. Although mortgages were promised to the petitioner in consideration for the loans, these mortgages were never issued.

3. Subsequently, a corporate officer and shareholder of Spier Bros., Inc. was indicted for mortgage fraud, and Spier Bros., Inc. went into bankruptcy.

4. The Income Tax Bureau conceded that petitioner Philip Gillman incurred a loss of \$49,775.00 in 1968 in connection with uncollectible loans to Spier Bros., Inc. which constituted a non-business bad debt.

5. Although petitioner's occupation was listed as that of a salesman on his 1968 New York return, he asserted that he was engaged in the business of making loans. However, his only borrower was Spier Bros., Inc. No evidence was submitted by him to indicate that his services as a lender were available to other businesses or individuals, or that this activity constituted his principal occupation.

#### CONCLUSIONS OF LAW

A. That petitioner Philip Gillman has failed to sustain the burden of proof necessary to show that the loss of \$49,775.00 which he incurred in 1968 in connection with uncollectible loans

to Spier Bros., Inc. constituted a business bad debt (deductible as an ordinary loss) within the meaning and intent of section 166 of the Internal Revenue Code.

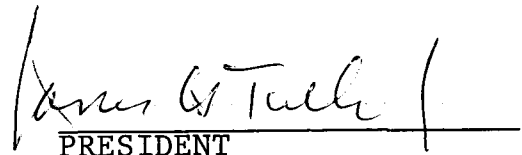
B. That petitioner Philip Gillman realized a non-business bad debt of \$49,775.00 in 1968, which is considered to be a loss from the sale or exchange of a short term capital asset in accordance with the meaning and intent of section 166(d) of the Internal Revenue Code.

C. That the petition of Philip Gillman and Frederica Gillman is granted to the extent that the non-business bad debt is allowed as a short term capital loss, for which a deduction against an ordinary loss is limited to \$1,000.00 for the year 1968.

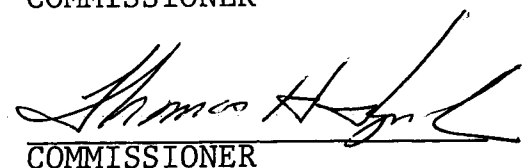
D. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 18, 1971, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
February 6, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER