

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHESTER J. and CECILIA M. MURPHY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~XX~~ 22 of the
Tax Law for the Year ~~XXXXXX~~ 1971:

State of New York
County of Albany

John Huhn, 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 24th day of April, 1978, he served the within

Notice of Decision by (certified) mail upon Chester J. & Cecilia M.
Murphy

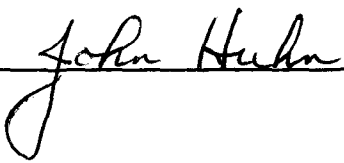

~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Chester J. & Cecilia M. Murphy
69 Vreeland Avenue
Nutley, New Jersey 07110

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 ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this
24th day of April, 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

April 24, 1978

**Chester J. & Cecilia M. Murphy
69 Vreeland Avenue
Nutley, New Jersey 07110**

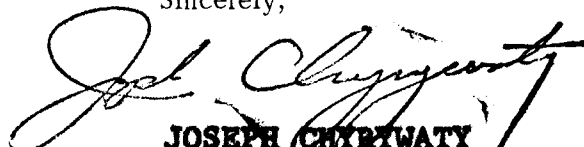
Dear Mr. & Mrs. Murphy:

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 CHIRWATY
HEARING EXAMINER**

~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHESTER J. and CECILIA M. MURPHY : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1971. :

Petitioners, Chester J. and Cecilia M. Murphy, 69 Vreeland Avenue, Nutley, New Jersey 07110, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 13331).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 26, 1976 at 10:45 A.M. Petitioner Chester J. Murphy appeared pro se and for his wife, petitioner Cecilia M. Murphy. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether a loss sustained by nonresident petitioners during 1971 was a business or non-business bad debt.

FINDINGS OF FACT

1. Petitioners, Chester J. and Cecilia M. Murphy, filed a New York State income tax nonresident return for 1971 in which a \$20,000.00 loss was deducted from income. The Income Tax Bureau contended that the loss was a non-business bad debt, reportable as a short-term capital loss and, as such, not deductible by nonresident petitioners. A Notice of Deficiency was issued January 28, 1974 against petitioners, Chester J. and Cecilia M. Murphy, for the year 1971 in the amount of \$1,981.98 in personal income tax, plus \$212.33 in interest, for a total due of \$2,194.31.

2. Petitioner Chester J. Murphy was employed in New York State by Francis I. duPont and Company as a branch office manager. In 1969 said company announced the establishment of a trust for the benefit of employees who had demonstrated qualities of leadership and ability. The selected employees were invited to subscribe to the trust in units of \$10,000.00 and \$20,000.00 on which 6% interest per annum would be paid, plus a percentage of the company's net profit. The announcement stated that, had the trust been in existence, a total return on the investment would have been made of over 30% in 1967 and 18% in 1968. The subscribed monies would go into a trust which would lend these funds to Francis I. duPont and Company.

3. Chester J. Murphy contended that any selected employee who failed to invest in the trust would not be considered for future promotions. No evidence was submitted to show that the present or future

employment of any qualified employee was in jeopardy if he failed to subscribe. In 1971 the loan made to Francis I. duPont and Company by the trust was declared worthless when the company was taken over by another party.

CONCLUSIONS OF LAW

A. That the loss sustained by petitioners, Chester J. and Cecilia M. Murphy, in the year 1971 was a non-business bad debt, to be treated as a short-term capital loss in accordance with the meaning and intent of section 166 of the Internal Revenue Code.

B. That since the loss was a non-business bad debt reportable as a short-term capital loss, it is not deductible for purposes of New York State income tax by nonresident petitioners in accordance with the meaning and intent of section 632 of the New York Tax Law.

C. That the petition of Chester J. and Cecilia M. Murphy is denied and the Notice of Deficiency issued January 28, 1974 is sustained.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER