

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Bud H. Gibbs :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1970. :

State of New York

County of Albany

Jay Vredenburg, 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 28th day of September, 1979, he served the within notice of Decision by certified mail upon Bud H. Gibbs, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bud H. Gibbs

1884 W. 11th St.

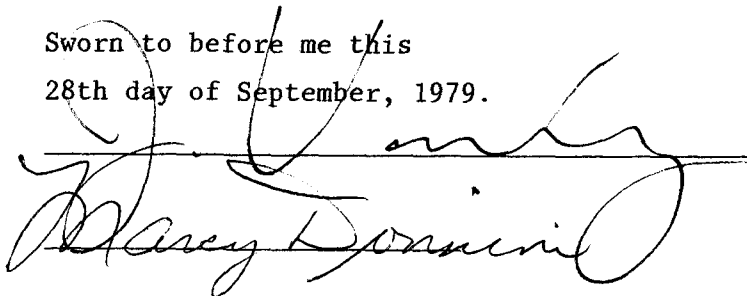
New York, NY 10024

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

Sworn to before me this

28th day of September, 1979.



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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Bud H. Gibbs
1884 W. 11th St.
New York, NY 10024

Dear Mr. Gibbs:

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(s) 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,

A handwritten signature in black ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BUD H. GIBBS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioner, Bud H. Gibbs, 1 West 81st Street, New York, New York 10024, 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 1970 (File No. 12616).

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 24, 1978 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether a loss sustained by petitioner during 1970 was a business or a non-business bad debt.

FINDINGS OF FACT

1. Petitioner, Bud H. Gibbs, and his wife, Patricia Gibbs, filed a New York State income tax return for 1970, on which he deducted \$11,000.00 as a business bad debt.

2. Petitioner contended that the bad debt constituted a loss which resulted from a payment made by him to creditors of his corporation. Said payment was made so that the company's "Plan of Arrangement" could be confirmed, thereby protecting his salary income as an employee.

3. The Income Tax Bureau contended that petitioner's principal motive in making the payment was to protect his investment rather than his job; therefore, said payment constituted a short-term capital loss rather than a business bad debt which would be deductible as an ordinary loss. On November 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1970, in the amount of \$599.58 in personal income tax, plus \$129.89 in interest, for a total due of \$729.47.

4. Gibbs and Company, Inc. ("Gibbs"), was a family-owned corporation engaged in the business of hair care. Petitioner's original investment in Gibbs consisted of shares of stock which he received as a gift, and as a beneficiary of an estate. The stock was valued at approximately \$109,000.00. The corporation subsequently redeemed the equity of the other major stockholders for \$1,500,000.00. During the year at issue, petitioner was president and the sole stockholder of Gibbs. He received wages of \$26,930.00.

5. In 1969, Gibbs went into bankruptcy proceedings under Chapter XI of the Bankruptcy Act. On June 29, 1970, it filed a plan of arrangement which required \$200,000.00 in additional financing. A financing firm agreed to put up most of the funds required by the plan, but required that petitioner sell 25% of his stock, sell one of Gibbs' five divisions, and personally advance \$11,000.00 to

certain creditors. Petitioner complied with the finance company's requirements. The purpose of the arrangement was to keep Gibbs out of bankruptcy and to permit it to continue its operations. The plan was successful and Gibbs was able to avoid bankruptcy; however, the firm did not prosper. As a result, said firm discontinued operations several years later.

CONCLUSIONS OF LAW

A. That petitioner did not sustain the burden of proof which is imposed by section 689(e) of the Tax Law, and which requires him to establish that his principal motive in making the payment to his corporation was to protect his salary income as an employee, rather than to protect his investment.

B. That the loss sustained by petitioner during 1970 was a non-business bad debt, which was deductible for personal income tax purposes as a short-term capital loss, in accordance with the meaning and intent of section 166 of the Internal Revenue Code.

C. That the petition of Bud H. Gibbs is denied and the Notice of Deficiency issued November 25, 1974 is sustained.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO .. Mr. Coburn

Better address. Remailed 10/15/79.

BUD H. GIBBS

10/15/79

Joseph Chyrywaty

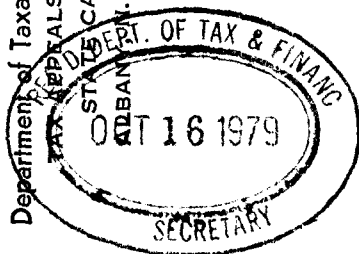
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

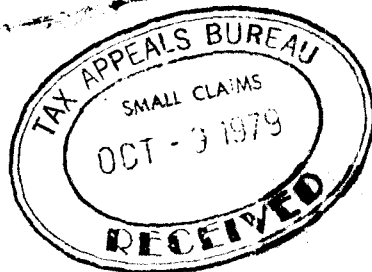
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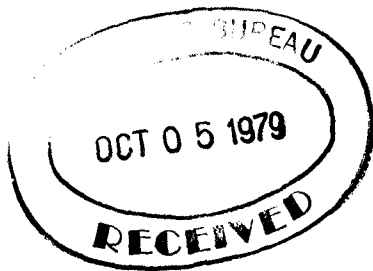
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-24-5625

End H. Gibbs
1884 W. 11th St.
New York, NY 10024



NO SUCH STAMP



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BUD H. GIBBS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ Refund :
of Personal Income :
Tax~~es~~ under Article ~~(X)~~ 22 of the :
Tax Law for the Year~~s~~ ~~XXXXXXXXXXXX~~ :
1970.

State of New York
County of ALBANY

Jay Vredenburg, 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 15th day of October, 1979, he served the within
Notice of Decision by ~~(XXXXXXXX)~~ mail upon Bud H.

Gibbs ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bud H. Gibbs
1 West 81st Street
New York, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(XXXXXXXXXXXX)~~
~~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

15th day of October, 1979.

Nancy Donneri

J. J. Vredenburg