

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Leon & Doris Bookman :

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 1973. :

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 March, 1980, he served the within notice of Decision by certified mail upon Leon & Doris Bookman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon & Doris Bookman
770 Wehrle Dr.
Buffalo, NY 14225

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 March, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for the Year 1973. :

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 March, 1980, he served the within notice of Decision by certified mail upon Michael M. Babat the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Michael M. Babat
Suite 808, B.A.C. Bldg., 69 Delaware Ave.
Buffalo, NY 14202

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
28th day of March, 1980.

Jeanne Knapp

J. Vredenburg

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

March 28, 1980

Leon & Doris Bookman
770 Wehrle Dr.
Buffalo, NY 14225

Dear Mr. & Mrs. Bookman:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael M. Babat
Suite 808, B.A.C. Bldg., 69 Delaware Ave.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE TAX COMMISSION

DECISION

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on April 24, 1979 at 2:45 P.M. Petitioner appeared by Michael M. Babat, Esq. and Leonard J. Freed, CPA. The Audit Division appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

Whether shares of stock owned by petitioners became worthless at the end of the year 1973 or in some other year.

1. Petitioners, Leon Bookman and Doris Bookman, timely filed a New York State Income Tax Resident Return for 1973. In arriving at their total income for the year, petitioners deducted the maximum capital loss allowable of \$1,000.00, based on a loss of worthless securities of Harvest Markets, Inc. valued at \$130,850.00.

2. On March 4, 1975, the Income Tax Bureau issued a Statement of Audit Changes against Leon Bookman and Doris Bookman, on which the loss they claimed for capital gains or losses had been corrected from a loss to a gain based on information and evidence available to the Bureau. The gain was the result of disallowing the deduction for the Harvest Markets, Inc. securities which was adjudged bankrupt by an order entered on February 20, 1974. This adjustment resulted in a decrease in allowable medical and dental expenses because of the effect of section 213(a)(1) of the Internal Revenue Code and an increase in New York income caused by the 20 percent capital gain modification (section 612(b)(11) of the Tax Law). In addition, the allowable deduction for interest expense was increased by \$159.00 as a result of information submitted by petitioners.

3. Based on the above mentioned Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency against petitioners on October 27, 1975, asserting additional personal income tax of \$569.25, plus interest of \$65.50, for a total due of \$634.75.

4. On September 10, 1973, following the refusal of the principal supplier of Harvest Markets, Inc. to continue to make deliveries, Harvest Markets, Inc. filed in United States District Court for the Western District of New York, a petition for an arrangement under Chapter XI, section 322 of the Bankruptcy Act.

5. On September 11, 1973, an order was granted by the bankruptcy judge, appointing Harvest Markets, Inc. as a debtor in possession.

6. Under the name of Park Edge Markets, an attempt was made to reopen a few of the stores which had been closed by the bankruptcy. An arrangement was formulated where Park Edge Markets entered as a supplier and provided operating costs for the few reopened stores. However, in December, 1973, Park Edge

Markets determined the operations of the reopened stores to be unsatisfactory and withdrew from further participation in the Chapter XI proceedings. Harvest Markets, Inc. was unable to secure another backer; therefore, Park Edge Markets sold off its inventory in the reopened stores at a loss to them in early January, 1974 and ceased operations. Thereafter, Harvest Markets, Inc. was unable to reopen any of its stores and was duly adjudged bankrupt by an order entered in on February 29, 1974.

7. On October 27, 1973, Harvest Markets, Inc. had an accumulated deficit of \$53,978.30. Leonard J. Freed, CPA, who was the accountant during bankruptcy proceeding testified that the stock became worthless in 1973.

CONCLUSIONS OF LAW

A. That stock becomes worthless in the taxable year in which it has some value at the beginning of the year, and has no value at the end of the year (Eagleton, 35 B.T.A. 551).

B. That when Harvest Markets, Inc.'s liabilities greatly exceeded its assets, and the nature of its assets and business was such that there was no further reasonable hope and expectation that a continuation of the business would result in any profit to Harvest Markets, Inc.'s shareholders, its value had become extinct (Sterling Morton, 38 B.T.A. 1270).

C. That Harvest Markets, Inc.'s stock became worthless at the end of the year 1973 without having to wait for a later year when bankruptcy, etc., occurs (Charles W. Steadman v. Com., 50 T.C. 369, Aff'd 424 F.2d 1, cert. denied 400 U.S. 869).

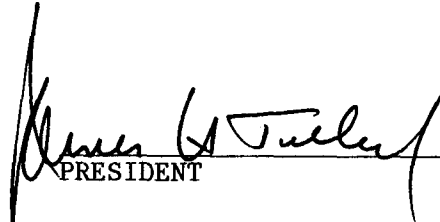
D. That the petition of Leon and Doris Bookman is granted and the Notice of Deficiency issued October 27, 1975, in the amount of \$634.75, is cancelled.

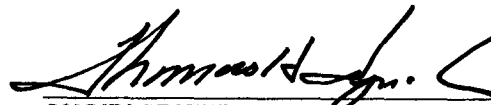
That the Audit Division is directed to authorize any refund which results from the allowance of additional interest expense of \$159.00.

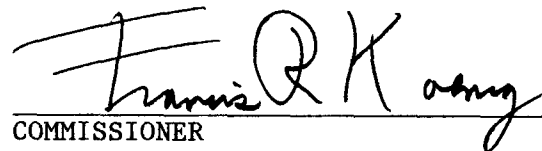
DATED: Albany, New York

MAR 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER