

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Paul F. & Jean M. Braun :

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 1972. :

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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Paul F. & Jean M. Braun, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul F. & Jean M. Braun
113 E. Jackson St.
Palmyra, NY 14522

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
4th day of April, 1980.

Joanne Krapp

J. Vredenburg

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

April 4, 1980

Paul F. & Jean M. Braun
113 E. Jackson St.
Palmyra, NY 14522

Dear Mr. & Mrs. Braun:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PAUL F. BRAUN and JEAN M. BRAUN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioners, Paul F. Braun and Jean M. Braun, 113 East Jackson Street, Palmyra, New York 14522, 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 1972 (File No. 18741).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Room 1300, Rochester, New York, on July 17, 1979 at 9:15 A.M. Petitioner, Paul F. Braun appeared pro se and for his wife, petitioner Jean M. Braun. The Audit Division appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUE

Whether petitioners were entitled to a net operating loss carryback to 1972 which was sustained when they absorbed loans made to Braun's Appliances, Inc.

FINDINGS OF FACT

1. Petitioners, Paul F. Braun and Jean M. Braun, timely filed a joint New York State Income Tax Resident Return for 1972. On February 16, 1976, petitioners filed an amended New York State Income Tax Resident Return for 1972 wherein they reported a carryback loss of \$24,359.61 which was derived from a loss reported on petitioners' timely filed joint New York State Income Tax Resident Return for 1975. The amended return resulted in an overpayment

of \$2,639.58 which petitioners requested be refunded to them.

2. On April 11, 1977, the Audit Division issued a Notice of Disallowance for the refund claim of \$2,639.58 for the taxable year 1972, asserting that the loss was an investment of capital by Paul F. Braun in his wholly-owned corporation, prior to the sale of his capital stock. That the amount of \$26,567.31 claimed as a loss on loans on petitioners' 1975 Federal Form 1040, which gave rise to a net operating loss should be disallowed and added to the basis of the capital stock sold by petitioner Paul F. Braun, since there was no attempt ever made by him to collect these loans from the corporation. No adjustments were made to petitioners' 1975 New York State Income Tax Resident Return.

3. In May, 1975, petitioner Paul F. Braun sold his wholly-owned corporation, Braun's Appliances, Inc. (hereinafter Braun's). Part of the agreement for the sale of Braun's was that the corporation was to have no liabilities. At the time of the sale, Braun's had on its books the following liabilities: accounts payable, \$3,569.29; two bank loans for the purchase of trucks, \$933.11 and \$2,335.74; a bank loan of \$9,200.00; a loan from the previous owner of the store, \$9,223.84; a loan of \$10,044.06 from petitioner Paul F. Braun and New York State franchise tax liability of \$125.00.

4. Petitioner Paul F. Braun contended that the loans by him to Braun's were informal in that he would loan the corporation money as need arose and would be reimbursed by the corporation as the cash flow would permit. He contended that Braun's paid him interest and that he advanced the corporation as much as \$22,000.00 at any one time.

5. At the time of the sale, Braun's reported assets of \$8,863.73 and capital stock of \$10,000.00, with retained earnings of \$36,567.31, for a total capital account of \$26,567.31.

6. Petitioners filed an amended Federal return for 1972 on which they reported the net operating loss. They received a refund pursuant to this return from the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That payment of corporate liabilities by petitioner-shareholder, pursuant to an agreement to indemnify Braun's against all obligations and liabilities which might be asserted against it, is to be treated as a contribution to capital or as part of the cost of the shares, and as such becomes an additional investment in the stock. Since the payments made by petitioners pertained to the Braun's business and not petitioners, they are not deductible by petitioners as losses or ordinary business expense. Similarly, the advances made by petitioners to the corporation are considered a capital contribution.

B. That petitioners did not sustain a net operating loss in 1975 for the purpose of a carryback to 1972 within the meaning and intent of section 172 of the Internal Revenue Code.

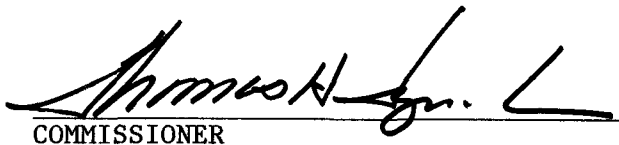
C. That the petition of Paul F. Braun and Jean M. Braun is denied and the Notice of Disallowance issued on April 11, 1977 is sustained.

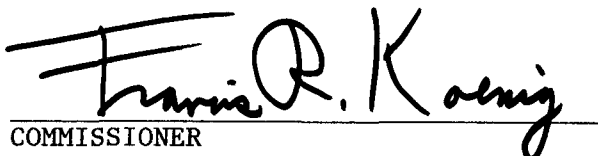
DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER